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TITLE 16

PRACTICE, PROCEDURE, AND COURTS

(CHAPTERS 1-17 IN VOLUME 14A; CHAPTERS 18-54 IN VOLUME 14B; CHAPTERS 90-128 IN VOLUME 16)

SUBTITLE 5. CIVIL PROCEDURE GENERALLY

SUBTITLE 6. CRIMINAL PROCEDURE GENERALLY

SUBTITLE 5. CIVIL PROCEDURE GENERALLY

CHAPTER 55

GENERAL PROVISIONS

Subchapter 1 — General Provisions

16-55-114. Notices — Form — Service generally.

(a)(1) The notices mentioned in this code shall be in writing and may be served by a sheriff, constable, coroner, or marshal of a town or city, whose return thereon shall be proof of the service.

(2) Notices may also be served by any person not a party or interested in the action or proceeding, whose affidavit shall be proof of the service, or by acknowledgment thereon in writing by the party upon whom served.

(b) The service of a notice shall be by giving a copy to the person to whom it is directed, or if he or she cannot be found at his or her usual place of abode, by leaving a copy there with a person over the age of sixteen (16) years residing in the same family with him or her, or if no such person is there, then by affixing a copy to the front door of the place of abode. If the person to whom the notice is directed cannot be found and has no known place of abode in this state, the notice may be served by delivering a copy to his or her attorney.

(c) The return of the officer or the affidavit of the person who served the notice shall state the time and manner of the service. If a copy of the notice is not given to the person to whom it is directed, the return or affidavit shall state the facts authorizing the manner of service pursued.

History. Civil Code, §§ 706, 707; C. & M. Dig., §§ 1327, 1328; Pope's Dig., §§ 1552, 1553; A.S.A. 1947, §§ 27-1203, 27-1204.

Publisher's Notes. This section is being set out to reflect a gender neutralization change in (b).

Subchapter 2 — Civil Justice Reform Act of 2003

Effective Dates. Acts 2013, No. 1315, § 3: Apr. 18, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that school district litigation is a complex and costly endeavor; that a new venue statute would resolve many issues regarding where a lawsuit should be brought; and that this act is immediately necessary because future litigants are currently relying on venue statutes that would require litigation in an inconvenient forum. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

Ark. L. Notes. Leflar, The Civil Justice Reform Act and the Empty Chair, 2003 Ark. L. Notes 67.

16-55-201. Modification of joint and several liability.

RESEARCH REFERENCES

Ark. L. Rev. Legislative Note, Arkansas's Civil Justice Reform Act of 2003: Who's Cheating Who?, 57 Ark. L. Rev. 651.

Note, To Truly Reform We Must Be Informed: Davis v. Parham, the Separation of Powers Doctrine, and the Constitutionality of Tort Reform in Arkansas, 59 Ark. L. Rev. 781.

Phantom Parties and Other Practical Problems with the Attempted Abolition of Joint and Several Liability, 60 Ark. L. Rev. 437.

CASE NOTES

Analysis

Constitutionality.
Construction.
Jury Instructions.
Necessary Party.

Constitutionality.

Allegedly injured driver brought suit against another motorist, who then brought suit against a third party; the jury determined that the third party was 100 percent at fault. The allegedly injured driver attacked the constitutionality of this section and § 16-55-212; however, the supreme court refused to consider the arguments because the supreme court considered the matter to be moot. Shipp v. Franklin, 370 Ark. 262, 258 S.W.3d 744 (2007).

Construction.

Civil Justice Reform Act (CJRA), § 16-55-201 et seq., pertains to fault apportionment in a general way, and the Arkansas Comparative Fault Act, § 16-64-122, specifically defines fault and identifies whose fault can be apportioned. Because these two provisions address the same subject matter, it is reasonable to conclude that the general terms of the CJRA are intended to be subject to the specific terms of the Arkansas Comparative Fault Act. Billings v. Aeropres Corp., 522 F. Supp. 2d 1121 (E.D. Ark. 2007).

Civil Justice Reform Act, § 16-55-201 et seq., can not be interpreted to permit a jury to apportion fault in a tort suit to an immune nonparty employer because doing so would render the statute unconstitutional: (1) such an interpretation would violate Ark. Const., Art. 4, § 2, which bars the state legislature from encroaching on the Arkansas Supreme Court's authority to supervise court procedure; and (2) such an interpretation would violate the employer's fundamental constitutional rights because § 11-9-105(a), the exclusivity provision of the Arkansas Workers' Compensation Act, § 11-9-101 et seq., deprives courts of subject matter jurisdiction over employers and protects employers from liability with regard to claims arising from a covered worker's employment-related injuries. Billings v. Aeropres Corp., 522 F. Supp. 2d 1121 (E.D. Ark. 2007).

Conversion does not necessarily involve damage to property, which would bring it within the reach of the statute and therefore, the Civil Justice Reform Act of 2003 (CJRA), codified at §§ 16-55-201 — 16-55-220, does not automatically apply to actions under § 18-60-102; the CJRA clearly evinces an intent to alter the common law regarding joint and several liability for the causes of action listed, such as personal injury or property damage, but it does not, however, display such an intent regarding causes of action involving the conversion of property, and thus, the trial court did not err in finding the company,

owner, and related individual jointly and severally liable with the business and business owner and with each other for the value of the landowner's timber. Shamlin v. Quadrangle Enters., 101 Ark. App. 164, 272 S.W.3d 128 (2008).

This section plainly provides that liability is to be apportioned with regard to "each defendant." Where there is only one defendant, this section is inapplicable. Proassurance Indem. Co. v. Metheny, 2012 Ark. 461, — S.W.3d —, 2012 Ark. LEXIS 499 (Dec. 13, 2012).

Trial court did not abuse its discretion by striking the hospital's third-party complaint against the rehabilitation center because the hospital did not have a cause of action against the rehabilitation center under this section as it did not create a cause of action. St. Vincent Infirmary Med. Ctr. v. Shelton, 2013 Ark. 38, — S.W.3d — (2013).

Jury Instructions.

In a medical negligence case that was brought against a liability insurer after a surgeon operated on the wrong side of the patient's brain, the circuit court did not abuse its discretion in refusing to submit non-model jury instructions that would have required the jury to apportion liability to parties who were not defendants; the circuit court properly instructed the jury to allocate the fault of the hospital where the surgery was performed only to the insurer. Proassurance Indem. Co. v. Metheny, 2012 Ark. 461, — S.W.3d —, 2012 Ark. LEXIS 499 (Dec. 13, 2012).

Necessary Party.

Trial court did not err by finding that the rehabilitation center was not a necessary or indispensable party under Ark. R. Civ. P. 19 because the presence of the rehabilitation center was not indispensable to the determination of the hospital's separate liability under the Civil Justice Reform Act of 2003. St. Vincent Infirmary Med. Ctr. v. Shelton, 2013 Ark. 38, — S.W.3d — (2013).

16-55-202. Assessment of percentages of fault.

CASE NOTES

Analysis

Constitutionality.
Application.
Interpretation.

Constitutionality.

Eastern District of Arkansas, Western Division, district court did not have to address a constitutional challenge to this section, the nonparty notice provision of the Civil Justice Reform Act (CJRA), § 16-55-201 et seq., because the CJRA could be plausibly interpreted to comply with the United States and Arkansas Constitutions and to conform with the Arkansas Workers' Compensation Act (WCA), § 11-9-101 et seq., and the Arkansas Comparative Fault Act (CFA), § 16-64-122. Pursuant to the canon of constitutional avoidance, the district court would not rule on the constitutionality of this section because doing so was not absolutely necessary. Billings v. Aeropres Corp., 522 F. Supp. 2d 1121 (E.D. Ark. 2007).

This section was unconstitutional and conflicted with Ark. Const., Art. 4, § 2 and Ark. Const., Amend. 80, § 3 because rules regarding pleading, practice, and procedure were solely the responsibility of the supreme court; the nonparty-fault provision bypassed the rules of pleading, practice and procedure by setting up a procedure to determine the fault of a nonparty and mandating the consideration of that nonparty's fault in an effort to reduce a plaintiff's recovery. Thomas v. Rockwell Automation, Inc., 2009 Ark. 241, 308 S.W.3d 135 (2009).

In a products liability action by an injured worker against the manufacturer of a defective chemical tank, the district court appropriately declined to allow the jury to assign a percentage of fault to the worker's employer, a nonparty, because the nonparty-fault provision in this section had been declared unconstitutional. McCoy v. Augusta Fiberglass Coatings, 593 F.3d 737 (8th Cir. 2010).

Application.

While a products liability defendant could issue a nonparty notice under subdivision (b)(2) of this section with regard

to a nonparty equipment manufacturer, it could not issue an apportionment of damages notice under subdivision (b)(2) of this section with regard to an injured worker's employer and coemployee: (1) the purpose of the notice under this section was to allow an apportionment of liability with regard to the injured worker's damages; (2) a notice under this section could only be used with regard to an individual or entity that could be made a party to the suit by way of cross or third party claims; (3) defendant could file a notice under this section against the manufacturer, provided it filed a third party complaint and brought the manufacturer in as a party to the suit; and (4) defendant could not file a notice under this section against the employer or the coemployee because they were statutorily immune pursuant to § 11-9-105(a), the exclusive remedies provision of the Workers' Compensation Act, § 11-9-101 et seq. Billings v. Aeropres Corp., 522 F. Supp. 2d 1121 (E.D. Ark. 2007).

Interpretation.

Nonparty notice requirements set out in subdivision (b)(2) of this section apply in addition to state civil procedure rules. This section should be interpreted as being compatible with § 16-64-122(a), which limits the apportionment of fault to an individual or entity from whom the claiming party seeks to recover damages, which includes individuals and entities that are subject to being brought into a suit pursuant to a cross or third party claim under Ark. R. Civ. P. 13 and 14, but excludes nonparties who are otherwise immune from suit, including employers who are immune pursuant to § 11-9-105(a), the exclusive remedies provision of the Workers' Compensation Act, § 11-9-101 et seq. Billings v. Aeropres Corp., 522 F. Supp. 2d 1121 (E.D. Ark. 2007).

16-55-206. Standards for award of punitive damages.

In order to recover punitive damages from a defendant, a plaintiff has the burden of proving that the defendant is liable for compensatory damages and that either or both of the following aggravating factors were present and related to the injury for which compensatory damages were awarded:

(1) The defendant knew or ought to have known, in light of the surrounding circumstances, that his or her conduct would naturally and probably result in injury or damage and that he or she continued the conduct with malice or in reckless disregard of the consequences, from which malice may be inferred; or

(2) The defendant intentionally pursued a course of conduct for the purpose of causing injury or damage.

History. Acts 2003, No. 649, § 9.

Publisher's Notes. This section is being set out to reflect a grammatical correction.

CASE NOTES

Analysis

Conduct Not Warranting Punitive Damages.
Relevant Evidence.

Conduct Not Warranting Punitive Damages.

Where plaintiff retailer sued defendant supplier on claims of fraud and deceptive trade practices in connection with the supplier's refusal to honor its rebate program for the retailer's customers, and the claims requiring any knowing or intentional wrongful act failed, and no reasonable jury could find that the supplier acted with malice or an intent to harm the retailer, the retailer was not entitled to pursue punitive damages under this section, especially since the standard under this section had to be met by clear and convincing evidence as required by § 16-

55-207. Curtis Lumber Co. v. La. Pac. Corp., 618 F.3d 762 (8th Cir. 2010).

In this action for negligent hiring, training, supervision or monitoring, and retention, defendants were granted summary judgment on plaintiffs' claims for punitive damages because plaintiffs had not provided evidence that would allow a reasonable jury to find that defendants knew or ought to have known that their conduct would naturally and probably result in injury or damage to the victim. Perry v. Stevens Transp., Inc., — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 94942 (E.D. Ark. July 9, 2012).

Alleged violations of the Federal Motor Carrier Safety Regulations did not support a punitive-damages award, because there was no evidence that the driver had been drinking alcohol or using controlled substances prior to the accident or that he was or appeared to be under the influence of alcohol or any controlled substances at the time of the accident. Brumley v. Keech, 2012 Ark. 263, — S.W.3d — (2012).

Relevant Evidence.

In a negligence case, a trial court erred by granting a motion in limine and excluding evidence of prior driving while intoxicated offenses because they were relevant under Ark. R. Evid. 401 to the determination of whether punitive damages under this section were warranted. Yeakley v. Doss, 370 Ark. 122, 257 S.W.3d 895 (2007).

Defendants were not entitled to summary judgment on punitive damages because a reasonable juror could find that defendant property owner, acting on behalf of defendant entities, knew or had reason to know that proceeding with excavation of the hillside without a recommended retaining wall in place would inflict injury to plaintiff's property, but he proceeded with excavation with conscious indifference to the consequences, from which malice may be inferred. Rivercliff Co. v. Residences at Riverdale GP, LLC, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 139158 (E.D. Ark. Dec. 2, 2011).

16-55-207. Burden of proof for award of punitive damages.

CASE NOTES

Analysis

Burden of Proof.
Summary Judgment Denied.

Burden of Proof.

Where plaintiff retailer sued defendant supplier on claims of fraud and deceptive trade practices in connection with the supplier's refusal to honor its rebate program for the retailer's customers, and the claims requiring any knowing or intentional wrongful act failed, and no reasonable jury could find that the supplier acted with malice or an intent to harm the retailer, the retailer was not entitled to pursue punitive damages under § 16-55-206, especially since § 16-55-206' s standard had to be met by clear and convincing evidence as required by this section. Curtis Lumber Co. v. La. Pac. Corp., 618 F.3d 762 (8th Cir. 2010).

Summary Judgment Denied.

Defendants were not entitled to summary judgment on punitive damages because a reasonable juror could find that defendant property owner, acting on behalf of defendant entities, knew or had reason to know that proceeding with excavation of the hillside without a recommended retaining wall in place would inflict injury to plaintiff's property, but he proceeded with excavation with conscious indifference to the consequences, from which malice may be inferred. Rivercliff Co. v. Residences at Riverdale GP, LLC, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 139158 (E.D. Ark. Dec. 2, 2011).

16-55-208. Limitations on the amount of punitive damages.

RESEARCH REFERENCES

Ark. L. Rev. Note, To Truly Reform We Must Be Informed: Davis v. Parham, the Separation of Powers Doctrine, and the Constitutionality of Tort Reform in Arkansas, 59 Ark. L. Rev. 781.

CASE NOTES

Constitutionality.

This section was unconstitutional under Ark. Const. Art. 5, § 32, because it limited the amount of recovery outside of an employment relationship. Therefore, a punitive damage award of $42 million against a manufacturer of genetically altered rice that allowed its rice to contaminate conventional seed was upheld. Bayer CropScience LP v. Schafer, 2011 Ark. 518, 385 S.W.3d 822 (2011).

Cited: Holiday Inn Franchising v. Hotel Assocs., 2011 Ark. App. 147, 382 S.W.3d 6 (2011).

16-55-211. Bifurcated proceeding.

RESEARCH REFERENCES

Ark. L. Rev. Note, To Truly Reform We Must Be Informed: Davis v. Parham, the Separation of Powers Doctrine, and the Constitutionality of Tort Reform in Arkansas, 59 Ark. L. Rev. 781.

16-55-212. Compensatory damages.

CASE NOTES

Analysis

Constitutionality.
Plain Error Review.

Constitutionality.

Allegedly injured driver brought suit against another motorist, who then brought suit against a third party; the jury determined that the third party was 100 percent at fault. The allegedly injured driver attacked the constitutionality of § 16-55-201 and this section; however, the supreme court refused to consider the arguments because the supreme court considered the matter to be moot. Shipp v. Franklin, 370 Ark. 262, 258 S.W.3d 744 (2007).

Court granted plaintiff's motion challenging the Arkansas Civil Justice Reform Act of 2003, subsection (b) of this section, and allowed plaintiff to introduce evidence of the amounts billed to her for medical services necessitated by the injuries that were the subject of her lawsuit, regardless of any discount that she had received on those amounts because (1) if the Arkansas Supreme Court were considering the constitutionality of subsection (b), it would hold that subsection (b) infringed on its constitutional prerogative to prescribe rules of evidence under Ark. Const., Amend. 80, § 3, and was, therefore, unconstitutional because subsection (b) would, if enforced, work a reversal of the collateral source rule that had been recognized and approved by the Arkansas Supreme Court, yet the Arkansas Supreme Court did not "prescribe" subsection (b), and (2) the Arkansas Supreme Court would, if presented with the instant motion, find that subsection (b) violated Ark. Const., Art. V, § 32 as the Arkansas Supreme Court had held that a personal injury plaintiff was entitled, assuming a successful showing of liability, to recover the payments made (or written off) on her behalf by a collateral source, but subsection (b) would prevent her from doing that. Burns v. Ford Motor Co., 549 F. Supp. 2d 1081 (W.D. Ark. 2008).

Medical costs provision, subsection (b)

of this section, violated separation of powers under Ark. Const., Art. 4, § 2 and Ark. Const., Amend. 80, § 3, because rules regarding the admissibility of evidence were within the province of the supreme court. Thomas v. Rockwell Automation, Inc., 2009 Ark. 241, 308 S.W.3d 135 (2009).

Plain Error Review.

In light of the Arkansas court's decision in Johnson v. Rockwell Automation, Inc., 2009 Ark. 241, 308 S.W.3d 135 (2009), a district court erred by limiting the presentation of evidence relating to damages based on subsection (b) of this section, and because a court had to consider the law at the time of appeal when reviewing for plain error, the error was clear. But the error did not affect plaintiff parents' substantial rights; the objectionable portions of the closing argument related to the failure of plaintiffs to support their claim for damages, as well as any evidence presented concerning the financial aspects of their daughter's care and treatment, were rendered irrelevant by the jury's verdict in favor of defendant hospital and obstetrician on liability. Csiszer v. Wren, 614 F.3d 866 (8th Cir. 2010).

16-55-213. Venue.

(a) All civil actions other than those mentioned in §§ 16-60-101 — 16-60-103, 16-60-107, 16-60-114, 16-60-115, and 16-60-119 and subsection (e) of this section must be brought in any of the following counties:

(1) The county in which a substantial part of the events or omissions giving rise to the claim occurred;

(2)(A) The county in which an individual defendant resided.

(B) If the defendant is an entity other than an individual, the county where the entity had its principal office in this state at the time of the accrual of the cause of action; or

(3)(A) The county in which the plaintiff resided.

(B) If the plaintiff is an entity other than an individual, the county where the plaintiff had its principal office in this state at the time of the accrual of the cause of action.

(b)(1) The residence of any properly joined named class representative or representatives may be considered in determining proper venue in a class action.

(2) The residency of any putative or actual member of a class other than a named representative shall not be considered in determining proper venue for a class action.

(c) In any civil action, venue must be proper as to each or every named plaintiff joined in the action unless:

(1) The plaintiffs establish that they assert any right to relief against the defendants jointly, severally, or arising out of the same transaction or occurrence; and

(2) The existence of a substantial number of questions of law or material fact common to all those persons not only will arise in the action, but also that:

(A) The questions will predominate over individualized questions pertaining to each plaintiff;

(B) The action can be maintained more efficiently and economically for all parties than if prosecuted separately; and

(C) The interest of justice supports the joinder of the parties as plaintiffs in one (1) action.

(d)(1) Unless venue objections are waived by the defendant or by unanimous agreement of multiple defendants, if venue is improper for any plaintiff joined in the action, then the claim of the plaintiff shall be severed and transferred to a court where venue is proper.

(2)(A) If severance and transfer is mandated and venue is appropriate in more than one (1) court, a defendant sued alone or multiple defendants, by unanimous agreement, shall have the right to select another court to which the action shall be transferred.

(B) If there are multiple defendants who are unable to agree on another court, the court in which the action was originally filed may transfer the action to another court.

(e) Any action for medical injury brought under § 16-114-201 et seq. against a medical care provider, as defined in § 16-114-201(2), shall be filed in the county in which the alleged act or omission occurred.

History. Acts 2003, No. 649, § 16; 2013, No. 1315, § 1.

Amendments. The 2013 amendment inserted "and 16-60-119" in (a).

CASE NOTES

Analysis

Construction.
Improper Venue.
Review.

Construction.

Given the past-tense language in subdivision (a)(1) of this section referring to the county "in which a substantial part of the events or omissions giving rise to the claim occurred," the Arkansas Supreme Court construes the Arkansas General Assembly's use of the past tense in subdivisions (a)(2)(A) and (a)(3)(A) to mean that venue is fixed where the plaintiff or defendant resided at the time of the events giving rise to the cause of action. Wright v. Centerpoint Energy Res. Corp., 372 Ark. 330, 276 S.W.3d 253 (2008).

Subsection (a) of this section repealed by implication an older venue statute, § 16-60-116(a): subsection (a) established a new general rule for venue different from the former rule, creating an irreconcilable conflict, and the subsection's reference to "all civil actions" demonstrated an intent to adopt a new venue scheme. Dotson v. City of Lowell, 375 Ark. 89, 289 S.W.3d 55 (2008).

Because an insurer was the first party to file suit, and it chose to do so in the county in which it had its principal office, pursuant to subsection (a) of this section, a circuit judge erred by applying the doctrine of forum non conveniens under § 16-4-101(D), effectively overruling the insurer's choice of venue. Farm Bureau Mut. Ins. Co. of Ark. v. Gadbury-Swift, 2010 Ark. 6, 362 S.W.3d 291 (2010).

Subsection (e) of this section was constitutional under Ark. Const. Art. 4, § 2 and did not conflict with the rules of civil procedure because venue was a matter that lay within the province of the General Assembly. Clark v. Johnson Reg'l Med. Ctr., 2010 Ark. 115, 362 S.W.3d 311 (2010), rehearing denied, Clark v. Johnson, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 223 (Apr. 22, 2010), rehearing denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 224 (Apr. 22, 2010).

Improper Venue.

Trial court properly dismissed a personal representative's wrongful death action for improper venue because under § 16-60-112(a) and subdivision (a)(3)(A) of this section, venue was proper where a tenant resided at the time of death from carbon monoxide poisoning; such an interpretation harmonized both statutes and avoided the disfavored result of repeal by implication. Wright v. Centerpoint Energy Res. Corp., 372 Ark. 330, 276 S.W.3d 253 (2008).

Where a writ of prohibition entered in the court's prior decision required the circuit court to dismiss the representative of the Arkansas consumers from the case, no

basis existed for venue over the only remaining named plaintiff; venue was not proper under either subdivision (a)(3)(A) or subsection (b)(1) of this section because the remaining plaintiff was a resident of Texas. Centerpoint Energy, Inc. v. Miller County Circuit Court, 372 Ark. 343, 276 S.W.3d 231 (2008).

Dismissal for improper venue under Ark. R. Civ. P. 12(b)(3) of a complaint alleging fraud in the inducement of contract was not erroneous because forum-selection clauses designated Kansas as governing law and in both Arkansas and Kansas a party had to plead fraud in the inducement of a forum-selection clause itself to avoid its application. Provence v. Nat'l Carriers, Inc., 2010 Ark. 27, 360 S.W.3d 725 (2010).

Dismissal of a medical malpractice claim against out-of-county service providers for lack of proper venue, under Ark. R. Civ. P. 12(b)(3), was proper where the patient received treatment from providers in two different counties and, under subsection (e) of this section, each provider had to be sued in the county where the services were provided. Clark v. Johnson Reg'l Med. Ctr., 2010 Ark. 115, 362 S.W.3d 311 (2010), rehearing denied, Clark v. Johnson, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 223 (Apr. 22, 2010), rehearing denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 224 (Apr. 22, 2010).

Review.

Even though an issue relating to venue was not waived because a compulsory counterclaim under Ark. R. Civ. P. 13(a) was filed, instead of a permissive counterclaim, an appellate court still could not reach the issue on review because an argument regarding whether subsection (a) of this section repealed § 16-60-111(a)(1) by implication was not raised below. In the motion for a change of venue, it was argued that the matter should have been transferred to a county where an executrix was a resident since the cause of action arose there, all witnesses resided there, and the official record and other matters related to the case were on record there. Richardson v. Brown, 2012 Ark. App. 535, — S.W.3d — (2012).

CHAPTER 56

LIMITATION OF ACTIONS

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

16-56-101. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as "SECTION 2".

Publisher's Notes. This section, concerning application of limitations for nonresidents, was repealed by Acts 2013, No. 1148, § 19[20]. The section was derived from Acts 1844, § 3, p. 24; C. & M. Dig., § 6962; Pope's Dig., § 8940; A.S.A. 1947, § 37-230.

16-56-104. Actions with limitation of one year.

RESEARCH REFERENCES

ALR. When statute of limitations begins to run on action against attorney for malpractice based upon negligence-View that statute begins to run from time of occurrence of negligent act or omission. 11 A.L.R.6th 1.

When statute of limitations begins to run on action against attorney for malpractice based upon negligence-View that statute begins to run from time of occurrence of sustaining damage or injury and other theories. 12 A.L.R.6th 1.

When statute of limitations begins to run on action against attorney for malpractice based upon negligence-View that statute begins to run from time client discovers, or should have discovered, negligent act or omission-Statement of rule and application of rule to providing client with allegedly negligent advice or failing to advise. 13 A.L.R.6th 1.

When statute of limitations begins to run on action against attorney for malpractice based upon negligence-View that statute begins to run from time client discovers, or should have discovered, negligent act or omission-Application of rule to conduct of litigation and delay or inaction in conducting client's affairs. 14 A.L.R.6th 1.

Timeliness of action under medical malpractice statute of repose, aside from effect of fraudulent concealment of patient's cause of action. 14 A.L.R.6th 301.

When statute of limitations begins to run on action against attorney for malpractice based upon negligence-View that statute begins to run from time client discovers, or should have discovered, negligent act or omission-Application of rule to property, estate, corporate, and document cases. 15 A.L.R.6th 427.

When statute of limitations begins to run on action against attorney for malpractice based upon negligence-View that statute begins to run from time client discovers, or should have discovered, negligent act or omission-Application of rule to negligent misrepresentation, failure to supervise junior counsel, conflict of interest, billing disputes, and unspecified acts of negligence. 16 A.L.R.6th 653.

When statute of limitations begins to run in case of dental malpractice. 17 A.L.R.6th 159.

CASE NOTES

Slander.

Employee's complaint, filed on January 24, 2008, alleged that the slanderous statements were made on or about January 15, 2006; because the complaint was filed more than one year after the occurrence of the allegedly slanderous statements, the employee's defamation claim against the partnership was barred by the statute of limitations. Roeben v. BG Excelsior Ltd. P'ship, 2009 Ark. App. 646, 344 S.W.3d 93 (2009), rehearing denied, Roeben v. Sneed, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 919 (Nov. 11, 2009), rehearing denied, Roeben v. Snellgrove, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 917 (Nov. 11, 2009).

16-56-105. Actions with limitation of three years.

RESEARCH REFERENCES

ALR. When statute of limitations begins to run on action against attorney for malpractice based upon negligence-View that statute begins to run from time of occurrence of negligent act or omission. 11 A.L.R.6th 1.

When statute of limitations begins to run on action against attorney for malpractice based upon negligence-View that statute begins to run from time of occurrence of sustaining damage or injury and other theories. 12 A.L.R.6th 1.

When statute of limitations begins to run on action against attorney for malpractice based upon negligence-View that statute begins to run from time client discovers, or should have discovered, negligent act or omission-Statement of rule and application of rule to providing client with allegedly negligent advice or failing to advise. 13 A.L.R.6th 1.

When statute of limitations begins to run on action against attorney for malpractice based upon negligence-View that statute begins to run from time client discovers, or should have discovered, negligent act or omission-Application of rule to conduct of litigation and delay or inaction in conducting client's affairs. 14 A.L.R.6th 1.

Timeliness of action under medical malpractice statute of repose, aside from effect of fraudulent concealment of patient's cause of action. 14 A.L.R.6th 301.

When statute of limitations begins to run on action against attorney for malpractice based upon negligence-View that statute begins to run from time client discovers, or should have discovered, negligent act or omission-Application of rule to property, estate, corporate, and document cases. 15 A.L.R.6th 427.

When statute of limitations begins to run on action against attorney for malpractice based upon negligence-View that statute begins to run from time client discovers, or should have discovered, negligent act or omission-Application of rule to negligent misrepresentation, failure to supervise junior counsel, conflict of interest, billing disputes, and unspecified acts of negligence. 16 A.L.R.6th 653.

When statute of limitations begins to run in case of dental malpractice. 17 A.L.R.6th 159.

Ark. L. Notes. Brill, Arkansas Law of Damages, Fifth Edition, Chapter 30: Real Property, 2004 Arkansas L. Notes 9.

CASE NOTES

Analysis

Construction.

Summary judgment was properly granted in favor of a construction company in a negligent construction case because a lawsuit was not filed until after the three-year period in subsection (3) of this section had run; there was no evidence that the company had performed any repairs or that repairs were done on its behalf, and, even if repair work had been done on the company's behalf, the statute of limitations would have only been tolled during the period of repairs, which was not of sufficient length to render the claim timely. Without proof of the attempted repairs, the statute of repose in § 16-56-112(a) did not come into play, and there was no tolling of the three-year statute of limitations. Marshall v. Turman Constr. Corp., 2012 Ark. App. 686, — S.W.3d —, 2012 Ark. App. LEXIS 806 (Dec. 5, 2012).

Applicability.

Specific statute under the Time-Share Act (§ 18-14-403) controlled plaintiff time-share owners' claims against defendant developers, as opposed to the general limitations statute (§ 16-56-105); had the court adopted the developers' argument, it would have terminated the owners' right to seek relief before any injury was known to them, which was contrary to the General Assembly's intention to protect consumers under the Act. Office of Child Support Enforcement v. Pyron, 363 Ark. 521, 215 S.W.3d 637 (2005).

Employee's ERISA claims for benefits under 29 U.S.C.S. § 1132(a), (e)(1), and (f); penalties under § 1132(c)(1); and breach of fiduciary duty under 29 U.S.C.S. § 1105(a) and (b), were dismissed because (1) the three-year statute of limitations set forth in subdivision (3) of this section applied to the employee's claim for penalties, the employee requested the plan summary in December 2001 and again in January 2002 but waited until April 2005 to make further inquiries and another year to file a complaint, and the employee did not act with "due diligence," to enforce her rights so she was not entitled to equitable tolling; (2) with regard to the employee's long-term disability (LTD) claim, the employee knew by December 2001 that her short-term (STD) claim had been denied, such denial served as notification to the employee that no more disability benefits would be approved, the employee should have known that LTD benefits were included and should have taken reasonable steps to enforce her claims, and the employer's failure to send the em-

ployee a plan summary did not excuse a four-year delay, so the three-year statute of limitation was not equitably tolled, and the employee's LTD claim was barred; (3) the employee's claim based on the employer's breach of fiduciary duty was also made too late because under the ERISA's statute of limitations, such claims had to be brought within three years under 29 U.S.C.S. § 1113(2); and (4) defendant's motion for judgment on the pleadings with regard to the employee's claim for STD benefits was construed as one for summary judgment and was granted because although the five-year limitations period set forth in § 16-56-111 applied to the claim, the statute of limitations was tolled because the amended claim for STD benefits related back to the original complaint under Fed. R. Civ. P. 15(c)(2), the employer offered an affidavit and documentation of its STD payments to the employee, and the employee did not respond to the employer's offer of proof. Gonser v. Cont'l Cas. Co., 515 F. Supp. 2d 929 (E.D. Ark. 2007).

Defendants' motion to dismiss plaintiffs' claims for trade secret misappropriation under § 4-75-601, intentional interference with contractual relationships or business expectancies, fraud, unjust enrichment, and civil conspiracy was denied because there were fact issues as to whether plaintiffs' claims accrued within the applicable three-year statute of limitations set forth in § 4-75-603 and this section and whether the application of the doctrine of fraudulent concealment was appropriate, and further, plaintiffs' allegations were sufficient to withstand a motion to dismiss. Roach Mfg. Corp. v. Northstar Indus., 630 F. Supp. 2d 1004 (E.D. Ark. 2009).

Attorneys.

Circuit court did not err by dismissing appellants' legal malpractice claims against their attorney, because they were barred by the three-year statute of limitations under this section; although appellants attempted to categorize the claims differently, the "gist" of their complaint was legal malpractice. The circuit court did not err in failing to apply the discovery rule, because the traditional occurrence rule applied in Arkansas; and appellants did not bring their action within three years of the last alleged negligent act. Richardson v. Madden, 2012 Ark. App. 120, — S.W.3d — (2012).

Civil Rights.

Claims parents filed under 42 U.S.C.S. § 1983, alleging, inter alia, that a school district and a vice principal committed sex discrimination and violated their son's rights under the U.S. Constitution when they failed to protect their son from attacks by other students, were not necessarily barred by the three-year statute of limitations contained in this section because some of the incidents they described in their complaint occurred more than three years before they filed their lawsuit. The parents alleged persistent harassment and discrimination which, over the course of time, rose to the level of a constitutional violation. Wolfe v. Fayetteville Ark. Sch. Dist., 600 F. Supp. 2d 1011 (W.D. Ark. 2009).

Inmate was denied in forma pauperis status because his 42 U.S.C.S. § 1983 complaint was time-barred under the applicable state law statute of limitations. Hendrix v. Vaughn, — F. Supp. 2d —, 2010 U.S. Dist. LEXIS 1345 (W.D. Ark. Jan. 8, 2010).

Commencement.

Trial court did not err in dismissing plaintiff's complaint for interference with a contractual relationship or business expectancy and breach of an implied contract as the statute of limitations was three years under this section; the cause of action arose in January 1999, when defendant left plaintiff's employment, started a directly competing business and induced plaintiff's employees and customers to leave plaintiff's business, but the complaint was not filed until August 2002. Quality Optical of Jonesboro, Inc. v. Trusty Optical, L.L.C., 365 Ark. 106, 225 S.W.3d 369 (2006).

Putative father's action for breach of contract and negligence, brought after a 2003 DNA test indicated that a 1991 test had erroneous shown that he was a child's biological father, was untimely because the occurrence rule, rather than the discovery rule, applied to this section's 3-year statute of limitations. Tate v. Lab. Corp. of Am. Holdings, 102 Ark. App. 354, 285 S.W.3d 261 (2008).

Contracts Generally.

Written security agreement was a sufficient acknowledgment of a valid existing

debt for attorney's fees so as to start the statute of limitations running anew. However, the written acknowledgement did not transform the oral agreement for fees into a written one, and the three-year statute applicable to oral agreements under this section still applied, rather than the five-year statute for written agreements under § 16-56-111, thereby barring an attorney's claim for fees. Still v. Perroni Law Firm, 2011 Ark. 447, 385 S.W.3d 182 (2011).

Employment Contracts.

Three-year statue of limitations set forth in this section applies to private causes of action brought pursuant to the Arkansas Minimum Wage Act, § 11-4-218(e), because § 11-4-218(e) constitutes a liability created expressly by statute, and it does not include a specific limitations provision; where a cause of action is brought pursuant to a statute that does not expressly provide a limitations period, this section is the appropriate limitations provision. Douglas v. First Student, Inc., 2011 Ark. 463, 385 S.W.3d 225 (2011).

Fraud and Deceit.

Summary judgment was properly awarded to bank in customer's action for conversion, negligence, breach of fiduciary duty, civil conspiracy, constructive fraud, and fraudulent concealment where the action was barred by the three-year statute of limitations; the bank did not commit any act of fraud that would toll the running of the statute of limitations. Tech. Ptnrs, Inc. v. Regions Bank, 97 Ark. App. 229, 245 S.W.3d 687 (2006).

An unattested notation on the margin of a document was insufficient to extend the maturity date of the bonds at issue, and the bonds matured at the latest in 1954 and were purchased by the holder in 1974, 20 years after their maturity date, so any remaining claims would have to have been brought before the bonds became unenforceable. The holder did not contact the bank until 1984, 30 years after the maturity date and well after any applicable statute of limitations periods; therefore, the holder was barred by the three year statute of limitations under this section from bringing any of his breach of fiduciary duty, fraud, conversion, or negligence claims. Wilkins v. U.S. Bank, N.A., 514 F. Supp. 2d 1120 (W.D. Ark. 2007).

In a case arising out of a real property transaction, a fraud action was barred by the three-year statute of limitations because the cause of action arose when a deed was executed in 1996, and there was no evidence of fraudulent concealment to toll the limitations period. Riddle v. Udouj, 99 Ark. App. 10, 256 S.W.3d 556 (2007), rehearing denied, Riddle v. Udouj, — Ark. App. —, — S.W.3d —, 2007 Ark. App. LEXIS 530 (June 20, 2007), aff'd, Riddle v. Udouj, 371 Ark. 452, 267 S.W.3d 586 (2007).

Dismissal of appellant's tort action was appropriate because the action was barred by the statute of limitations. Appellant had plenty of time and the opportunity after she should have, by reasonable diligence, discovered the asserted fraud to bring suit and to counter the defense of release with the present allegation that it had been fraudulently obtained. Pambianchi v. Howell, 100 Ark. App. 154, 265 S.W.3d 788 (2007).

Agent's claim against an insurance company for making false representations was barred by the three-year statute of limitations because the limitations period began to run when the agent received a letter from the company notifying the agent that it wished to terminate the agent's contract. Gunn v. Farmers Ins. Exch., 2010 Ark. 434, — S.W.3d — (2010), rehearing denied, — Ark. —, — S.W.3d —, 2011 Ark. LEXIS 382 (Jan. 6, 2011).

In an action by a solicitor against a contractor and others, the trial court did not err in refusing to dismiss the solicitor's fraud claim as time-barred because the relevant dates of the alleged fraud, fraudulent concealment, or the solicitor's discovery of the fraud, from which the trial court could rule on the statute-of-limitations defense as a matter of law, were not discernible from the complaint. Nobles v. Tumey, 2010 Ark. App. 731, 379 S.W.3d 639 (2010).

Trial court did not err in granting a law firm's partial motion for summary judgment based on the three-year statute of limitations under subdivision (1) of this section, and dismissing an attorney's counterclaim for constructive fraud because the firm presented evidence that it was unaware of an erroneous fee percentage until after the litigation began, and the attorney failed to meet proof with proof. Grayson & Grayson, P.A. v. Couch,

2012 Ark. App. 20, 388 S.W.3d 96 (2012), rehearing denied, — S.W.3d —, 2012 Ark. App. LEXIS 212 (Ark. Ct. App. Feb. 8, 2012).

Insurance.

Insurance underwriter's negligence claim against its agent, arising from the agent's issuance of a general liability policy to an Alabama motel in violation of the parties' binding authority agreement, was time-barred under this section because the underwriter filed its suit more than three years after the date the agent acted negligently by issuing the policy. Certain Underwriters at Lloyds v. Regions Ins., Inc., 613 F. Supp. 2d 1050 (E.D. Ark. 2009).

Insurance underwriter's equitable indemnification claim against its agent was not time-barred under this section: (1) the equitable indemnification claim arose from the fact that the underwriter paid settlements in two lawsuit filed against an insured motel after the agent, which had issued a general liability policy to the motel in violation of the parties' binding authority agreement, refused to provide defense and indemnification in the suits; (2) the underwriter's claim did not accrue until it actually paid to settle the suits; and (3) the equitable indemnification claim was timely asserted because the underwriter filed its suit less than three years after it tendered the settlement payments. Certain Underwriters at Lloyds v. Regions Ins., Inc., 613 F. Supp. 2d 1050 (E.D. Ark. 2009).

Malpractice.

Directing of a verdict in favor of employee on the employers' issue of accounting malpractice was inappropriate as Arkansas adhered to the "occurrence rule" and there was evidence that the employers did not accept the employee's tax advice until March 2000; if that was the case, then the action would not have been barred by the three-year statute of limitations.Morrow Cash Heating Air, Inc. v. Jackson, 96 Ark. App. 105, 239 S.W.3d 8 (2006).

Trial court properly dismissed a client's complaint against an attorney for breach of contract, deception, slander, and defamation of character because the three-year statute of limitations barred the complaint. The "gist" of the client's complaint was that the attorney failed to act diligently and timely file a proper appeal on the client's behalf; such inaction was clearly negligent. Kassees v. Guy Randolph Satterfield & Satterfield Law Firm, PLC, 2009 Ark. 91, 303 S.W.3d 42 (2009).

When the client sued the attorney in connection with the execution of a prenuptial agreement, her complaint was barred by the three-year statute of limitations for legal-malpractice claims under this section. There was no written contract to bring the action under the five-year statute of limitations set forth in § 16-56-111. Pounders v. Reif, 2009 Ark. 581, — S.W.3d — (2009).

Clients' legal malpractice suit under § 16-22-306 for failure of a law firm to properly file a medical malpractice suit was barred by the three-year statute of limitations under subdivision (3) of this section because, under the occurrence rule, the clients' legal malpractice action ran no later than three years after the last day that their medical malpractice action could have been properly instituted. Rice v. Ragsdale, 104 Ark. App. 364, 292 S.W.3d 856 (2009), review denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 427 (May 14, 2009).

Occurrence Rule.

Where two cities solicited bids for the construction of the wastewater facility, engineers prepared a soil report on September 30, 2001; a contractor was the successful bidder for the construction project and contracted with the cities on June 7, 2002. When the contractor filed suit against the engineers on May 24, 2005 for professional negligence in the preparation of the soil report, the circuit court correctly applied the occurrence rule to determine that the professional negligence claim against the engineers was barred by the three-year statute of limitations set forth in this section. Bryan v. City of Cotter, 2009 Ark. 457, 344 S.W.3d 654 (2009).

Service of Process.

Negligence action for a slip and fall was improperly dismissed as being barred by the three-year limitations period because, under Ark. R. Civ. P. 15(c), an amendment correcting the name of a wrong owner as defendant related back to the original complaint in that the same allegations

were made and the new owner was served within 120 days, as set forth in Ark. R. Civ. P. 4(i). Bell v. Jefferson Hosp. Ass'n, 96 Ark. App. 283, 241 S.W.3d 276 (2006).

Tolling of Statute.

Three-year statute of limitations for a legal malpractice action was not tolled by fraudulent concealment due to an incorrect statement made by attorneys regarding a tax liability letter; there was no furtively planned or secretly executed acts, nor was there an affirmative act of concealment; rather, the client failed to act with reasonable diligence when he was informed of the tax liability by the State on two different times. Delanno, Inc. v. Peace, 366 Ark. 542, 237 S.W.3d 81 (2006).

Circuit court improperly granted two attorneys summary judgment on a shareholder's legal malpractice action based on subdivision (3) of this section (Repl. 2006) where the shareholder had produced evidence that the attorneys had set up and concealed shell corporations; it was unlikely that he could have discovered the concealment of the attorneys' wrongful acts, and as a result, there was a genuine issue of fact as to whether the attorneys committed acts of fraudulent concealment that tolled the statute of limitations. Bomar v. Moser, 369 Ark. 123, 251 S.W.3d 234 (2007).

More than three years had elapsed since the commission of the alleged fraud, and thus the buyers had the burden to show that the statute of limitations in this section was tolled; however, the buyers failed to produce any evidence that the seller engaged in any act designed to conceal her alleged misrepresentation, and instead the buyers were aware of all the material facts surrounding the alleged fraud before taking possession of the land, and thus the trial court did not err in finding that the buyers' constructive fraud claim had expired. Riddle v. Udouj, 371 Ark. 452, 267 S.W.3d 586 (2007), rehearing denied, — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 666 (Dec. 6, 2007).

In a personal injury suit, when a pedestrian and his wife failed to properly serve a summons and complaint on a driver, and service was not completed within 120 days of the filing of the complaint, the complaint had to be dismissed without prejudice, but when service was not completed within the three-year statute of limitations period, the dismissal had to be with prejudice because the pedestrian and his wife failed to show fraud on the part of the driver, so the statute of limitations was not tolled. Brennan v. Wadlow, 372 Ark. 50, 270 S.W.3d 831 (2008).

Business owners' claims against auditors for fraud, constructive fraud, and professional negligence regarding a 1995 audit were time-barred by this section despite a tolling agreement signed by the auditors because the tolling agreement's purpose was to waive the statute of limitations as to claims arising out a 1994 audit and the claims with respect to the 1995 audit were not related to nor did they arise from the 1994 audit. Ernst & Young LLP v. Reid, 2010 Ark. 255, — S.W.3d — (2010), rehearing denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 391 (Aug. 6, 2010).

Plaintiff's action was properly dismissed because his claims were clearly time-barred under this section and §§ 16-56-111, 4-88-115, and by failing to allege when and how he discovered defendant's alleged fraud, plaintiff failed to meet his burden under Fed. R. Civ. P. 9(b), (f) of sufficiently pleading that the doctrine of fraudulent concealment saved his otherwise time-barred claims. Summerhill v. Terminix, Inc., 637 F.3d 877 (8th Cir. 2011).

Claims by mineral lessors, including under the Arkansas Deceptive Trade Practices Act, § 4-88-101 et seq., were properly dismissed as time-barred under this section and § 4-88-115 where they were brought more than five years after the leases were executed; fraud was not sufficiently shown for purposes of tolling. Hipp v. Vernon L. Smith & Assocs., 2011 Ark. App. 611, 386 S.W.3d 526 (2011).

Torts.

A cause of action for contribution accrues when one joint tortfeasor pays more than his or her pro rata share of common liability; therefore, the three-year statute of limitations under this section had not yet expired due to the fact that a settlement had just been entered where an executor and his wife agreed to pay more of their fair share in a trust dispute. Heinemann v. Hallum, 365 Ark. 600, 232 S.W.3d 420 (2006).

In a foreclosure case involving a construction loan, summary judgment was

properly granted on the borrower's nonsuited counterclaims for negligence and interference with business expectancies, which were untimely under this section because they were filed more than three years after the lender refused further funding of the loan and were not saved by § 16-56-126 because they were filed more than two years after the voluntary nonsuit. Grand Valley Ridge, LLC v. Metro. Nat'l Bank, 2012 Ark. 121, 388 S.W.3d 24 (2012).

Trespass.

Estate administrator's amended complaint for the wrongful conversion of timber, brought on behalf of the estate, was time-barred under subdivisions (4) and (6) of this section, the three-year statute of limitations for trespass and conversion, and § 16-56-108, the two-year statute of limitations applicable to penal statutes where the penalty goes to the person suing, which included claims brought pursuant to § 18-60-102. It was also barred because the administrator failed to meet the bond requirement of § 28-42-103. Travis Lumber Co. v. Deichman, 2009 Ark. 299, 319 S.W.3d 239 (2009), rehearing denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 480 (June 25, 2009).

16-56-108. Recovery of statutory penalties.

CASE NOTES

Applicability.

Estate administrator's amended complaint for the wrongful conversion of timber, brought on behalf of the estate, was time-barred under § 16-56-105(4) and (6), the three-year statute of limitations for trespass and conversion, and this section, the two-year statute of limitations applicable to penal statutes where the penalty goes to the person suing, which included claims brought pursuant to § 18-60-102. It was also barred because the administrator failed to meet the bond requirement of § 28-42-103. Travis Lumber Co. v. Deichman, 2009 Ark. 299, 319 S.W.3d 239 (2009), rehearing denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 480 (June 25, 2009).

16-56-111. Notes and instruments in writing and other writings.

CASE NOTES

Analysis

Applicability.
Attorneys.
Date of Accrual.
Debts.
Insurance.
Property Settlement Agreement.
Real Estate Interests.
Written Acknowledgement of Oral Contract.

Applicability.

Employee's ERISA claims for benefits under 29 U.S.C.S. § 1132(a), (e)(1), and (f); penalties under § 1132(c)(1); and breach of fiduciary duty under 29 U.S.C.S. § 1105(a) and (b), were dismissed because (1) the three-year statute of limitations set forth in § 16-56-105(3) applied to the employee's claim for penalties, the employee requested the plan summary in December 2001 and again in January 2002 but waited until April 2005 to make further inquiries and another year to file a complaint, and the employee did not act with "due diligence," to enforce her rights so she was not entitled to equitable tolling; (2) with regard to the employee's long-term disability (LTD) claim, the employee knew by December 2001 that her short-term (STD) claim had been denied, such denial served as notification to the employee that no more disability benefits would be approved, the employee should have known that LTD benefits were included and should have taken reasonable steps to enforce her claims, and the employer's failure to send the employee a plan summary did not excuse a four-year delay, so the three-year statute of limitation was not equitably tolled, and the employee's LTD claim was barred; (3) the employee's claim based on the employer's

breach of fiduciary duty was also made too late because under the ERISA's statute of limitations, such claims had to be brought within three years under 29 U.S.C.S. § 1113(2); and (4) defendant's motion for judgment on the pleadings with regard to the employee's claim for STD benefits was construed as one for summary judgment and was granted because although the five-year limitations period set forth in this section applied to the claim, the statute of limitations was tolled because the amended claim for STD benefits related back to the original complaint under Fed. R. Civ. P. 15(c)(2), the employer offered an affidavit and documentation of its STD payments to the employee, and the employee did not respond to the employer's offer of proof. Gonser v. Cont'l Cas. Co., 515 F. Supp. 2d 929 (E.D. Ark. 2007).

Finding against the relatives in an action stemming from the relatives' default on a promissory note and security agreement previously executed was proper because the appellate court agreed with the circuit court's interpretation of the provision in the agreement to mean that the final payment, due on January 30, 2004, was to be a balloon payment of any unpaid balance on the note. Accordingly, the term "principal balance" was to include everything that remained unpaid on the date the last balloon payment came due; therefore, the damage claim included everything that remained unpaid throughout the course of the note and the circuit court's finding that the claim was not barred by the statute of limitations was proper. Housley v. Hensley, 100 Ark. App. 118, 265 S.W.3d 136 (2007).

In a nondischargeability action under 11 U.S.C.S. § 523(a)(2)(A), where the debt to which the debtors' misrepresentations related arose from a breach of a limited liability company's operating agreement, the five year statute of limitations for breach of contract stated in this section applied, not the three year period for fraud. Lewis v. Spivey (In re Spivey), 440 B.R. 539 (Bankr. W.D. Ark. 2010).

Circuit court did not err by dismissing appellants' legal malpractice claims against their attorney, because they were barred by the three-year statute of limitations under this section. Although appellants attempted to categorize the claims differently, the "gist" of their claim was legal malpractice; therefore, the five-year statute of limitations set forth in this section did not apply. Richardson v. Madden, 2012 Ark. App. 120, — S.W.3d — (2012).

Attorneys.

When the client sued the attorney in connection with the execution of a prenuptial agreement, her complaint was barred by the three-year statute of limitations for legal-malpractice claims under § 16-56-105. There was no written contract to bring the action under the five-year statute of limitations set forth in this section. Pounders v. Reif, 2009 Ark. 581, — S.W.3d — (2009).

Date of Accrual.

Court properly determined that employee's 2002 breach of contract action against employer was barred by the five-year statute of limitations; the action accrued at the point when employee could have first maintained his action, when the employer failed to apportion settlement funds to the Federal Railroad Retirement Board in 1990. Phillips v. Union Pac. R.R., 89 Ark. App. 223, 201 S.W.3d 439 (2005).

Insurance underwriter's breach of contract claim against its agent, arising from the agent's issuance of a general liability policy to an Alabama motel in violation of the parties' binding authority agreement, was time-barred under subsection (b) of this section because the underwriter filed its suit more than five years after the agent breached its contractual duty by issuing the policy. The underwriter's cause of action accrued when the contract was breached, not when it suffered injury arising from that breach, which occurred several years later, when lawsuits covered by the policy were filed against the insured motel and the agent refused to provide defense and indemnification in those suits. Certain Underwriters at Lloyds v. Regions Ins., Inc., 613 F. Supp. 2d 1050 (E.D. Ark. 2009).

Subdivision lot owner's action for breach of restrictive covenants and a declaration that such covenants were unenforceable was barred by the applicable statute of limitations under this section, as the cause of action accrued when a golf club and a successor-in-interest to the developer of the subdivision sold the first lot that they deferred a monthly fee for, not with each deferred lot sold. Beckworth

v. Diamante, 2010 Ark. App. 815, 379 S.W.3d 752 (2010).

Plaintiff's action was properly dismissed because his claims were clearly time-barred under this section and §§ 16-56-105, 4-88-115, and by failing to allege when and how he discovered defendant's alleged fraud, plaintiff failed to meet his burden under Fed. R. Civ. P. 9(b), (f) of sufficiently pleading that the doctrine of fraudulent concealment saved his otherwise time-barred claims. Summerhill v. Terminix, Inc., 637 F.3d 877 (8th Cir. 2011).

Debts.

Breach of contract claim involving a loan that was secured by a property deed was not barred by the statute of limitations because the breach claim did not accrue until just a few months before the filing of the complaint, when the lenders refused further payments and claimed the payments were merely rent because they owned the property at issue. Smith v. Eisen, 97 Ark. App. 130, 245 S.W.3d 160 (2006).

Five-year statute of limitations for written contracts applied under this section, and the last payments on June 24, July 7, and July 10, 2004, were made within the 5-year period after the creditors filed the claims on November 28, 2007, and April 3, 2008, because the debtor's use of the cards represented an intent to perform a unilateral contract by repaying the amount charged; the issuance of the card to the debtor to be accepted by her in accordance with the terms and conditions set forth by the card member agreements or rejected by non-use was an offer; and the contract became binding when the debtor retained the card, made use of it, and thereby agreed to the terms of the written agreement. In re Pettingill, 403 B.R. 624 (Bankr. E.D. Ark. 2009).

Bank's claim upon promissory note was not barred by the statute of limitations under this section as the note maker made a payment before the bar attached and created a new starting point for the limitations period. Valley v. Helena Nat'l Bank, 2010 Ark. App. 560, — S.W.3d — (2010).

Because appellee lender received insurance payments when the collateral for a promissory note was damaged in a fire, the trial court did not err in finding that the five-year statute of limitations for an action on the note was tolled under subsection (b) of this section by partial payments. Payton v. Coleman, 2012 Ark. App. 160, — S.W.3d — (2012).

Insurance.

Insured's breach of contract suit, which was brought outside an accidental death and dismemberment policy's three-year time limit, was timely. A§ 23-79-202 precluded the insurer from contractually shortening the limitations period to less than the five-year period for breach of contract actions under subsection (a) of this section. Graham v. Hartford Life & Accident Ins. Co., 677 F.3d 801 (8th Cir. 2012).

Property Settlement Agreement.

Former wife's claims in her motion for contempt that a former husband failed to comply with certain provisions in their property settlement agreement was barred by the five-year statute of limitations in this section that applied to written contracts as the settlement was an independent contract that did not merge with the divorce decree. The husband's mental health problems were not sufficient to make him insane for purposes of tolling the statute under § 16-56-116, and in any event, the wife, not the husband, was the one bringing the action. Wall v. Wall, 2011 Ark. App. 143, — S.W.3d — (2011).

Real Estate Interests.

Breach of warranty case against the sellers of real property was barred by the five-year statute of limitations because the cause of action accrued at the time of the sale, but not at the time of a court order quieting title in a portion of the property to several neighbors. The breach and constructive eviction occurred on the date of the deed. Riddle v. Udouj, 99 Ark. App. 10, 256 S.W.3d 556 (2007), rehearing denied, Riddle v. Udouj, — Ark. App. —, — S.W.3d —, 2007 Ark. App. LEXIS 530 (June 20, 2007), aff'd, Riddle v. Udouj, 371 Ark. 452, 267 S.W.3d 586 (2007).

Written Acknowledgement of Oral Contract.

Written security agreement was a sufficient acknowledgment of a valid existing debt for attorney's fees so as to start the statute of limitations running anew. How-

ever, the written acknowledgement did not transform the oral agreement for fees into a written one, and the three-year statute applicable to oral agreements under § 16-56-105 still applied, rather than the five-year statute for written agreements under this section, thereby barring an attorney's claim for fees. Still v. Perroni Law Firm, 2011 Ark. 447, 385 S.W.3d 182 (2011).

16-56-112. Design, planning, supervision, or observation of construction, repair, etc. — Actions for property damage, personal injury, or wrongful death.

CASE NOTES

Analysis

Applicability.
Action Barred.

Applicability.

Summary judgment was properly granted in favor of a construction company in a negligent construction case because a lawsuit was not filed until after the three-year period in § 16-56-105(3) had run; there was no evidence that the company had performed any repairs or that repairs were done on its behalf, and, even if repair work had been done on the company's behalf, the statute of limitations would have only been tolled during the period of repairs, which was not of sufficient length to render the claim timely. Without proof of the attempted repairs, the statute of repose in subsection (a) of this section did not come into play, and there was no tolling of the three-year statute of limitations. Marshall v. Turman Constr. Corp., 2012 Ark. App. 686, — S.W.3d —, 2012 Ark. App. LEXIS 806 (Dec. 5, 2012).

Action Barred.

Because subsection (f) of this section unambiguously prohibited the parties to a construction contract from extending, by agreement or otherwise, the five-year-limitations period set forth in subsection (a), the architect and designer were properly awarded partial summary judgment in an owner's breach of contract action. First Elec. Coop. Corp. v. Black, Corley, Owens & Hughes, P.A., 2011 Ark. App. 447, — S.W.3d — (2011).

Even though they relied on a written builder's warranty, the crux of homeowners' complaint was that they were damaged by the defective construction of their house. This fit squarely within this section, the statute of repose, and therefore their action brought more than five years after the home was completed was barred. Varadan v. Pagnozzi, 2012 Ark. App. 700, — S.W.3d —, 2012 Ark. App. LEXIS 824 (Dec. 12, 2012).

16-56-114. Judgments and decrees.

CASE NOTES

Analysis

In General.
Foreign Judgments.

In General.

Under § 16-65-501, the dealership owner's writ of scire facias to revive a ten-year-old judgment against the partner should have been granted because the owner's 1993 judgment had not been satisfied; the partner had twice tendered the cash and stock certificates but, despite his efforts, he had been unable to extinguish his judgment debt. Carder Buick-Olds Co. v. Wooten, 2009 Ark. App. 310, 308 S.W.3d 156 (2009).

Foreign Judgments.

Petition to revive a foreign judgment was not barred by the running of the statute of limitations under this section because the application was filed well within the 10 year period of a judgment that was registered in 2003; even if a judgment filed in 2001 was the appropriate judgment to begin the running of the limitations period, the application was

still timely because it was filed exactly 10 years from the date the judgment. The day that the judgment was entered was not counted in computing the limitations period. Bird v. Shaffer, 2012 Ark. App. 464, — S.W.3d — (2012).

16-56-115. Limitation of actions not otherwise provided for.

CASE NOTES

Analysis

Accrual.
Breach of Warranties.
Heirship Action.
Unfair Practices Act.

Accrual.

Subdivision lot owner's action for breach of restrictive covenants and a declaration that such covenants were unenforceable was barred by the applicable statute of limitations under this section, as the cause of action accrued when a golf club and a successor-in-interest to the developer of the subdivision sold the first lot that they deferred a monthly fee for, not with each deferred lot sold. Beckworth v. Diamante, 2010 Ark. App. 815, 379 S.W.3d 752 (2010).

Breach of Warranties.

It is clear that physical encroachments may result in a constructive eviction, and likewise, if a person builds a fence or wall completely surrounding his or her home and in so doing encloses a portion of their neighbor's yard, the record owner has been dispossessed; such an encroachment need not completely foreclose the possibility of physical entry in order to result in constructive eviction. Riddle v. Udouj, 371 Ark. 452, 267 S.W.3d 586 (2007), rehearing denied, — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 666 (Dec. 6, 2007).

Trial court properly found that buyers' claim of breach of the warranties of title and quiet enjoyment were barred by the statute of limitations under this section; there were visible fences establishing the boundary and the neighbors were using the disputed property as their own on the date of the conveyance, and thus the buyers were constructively evicted and the warranties of title and quiet enjoyment were breached as of the date of the conveyance in 1996, and the limitations period had expired when the buyers filed their complaint in 2005. Riddle v. Udouj, 371 Ark. 452, 267 S.W.3d 586 (2007), rehearing denied, — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 666 (Dec. 6, 2007).

For statute of limitation purposes under this section regarding buyers' claim of breach of the warranties of title and quiet enjoyment, the question was whether the buyers were constructively evicted from the disputed property at some point before an order was entered in a prior, separate quiet title action; the court noted that a neighbors' letter could only have put the buyers on notice of a competing claim to the land and it could not have effected an eviction if the buyers were currently in possession of the property, and while the trial court's reasoning was flawed in this regard, the court could affirm if the trial court reached the correct decision, which it did, that the breach of warranty claim was time-barred. Riddle v. Udouj, 371 Ark. 452, 267 S.W.3d 586 (2007), rehearing denied, — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 666 (Dec. 6, 2007).

Five-year statute of limitations for breach of warranty of title under this section began to run at the time defendants cut off electricity to a life estate grantee's home located on the property, not at an earlier date when she was unable to use the entire 463 acres of the property. Jackson v. Smith, 2010 Ark. App. 681, 380 S.W.3d 443 (2010), rehearing denied, — Ark. App. —, — S.W.3d —, 2010 Ark. App. LEXIS 833 (Dec. 1, 2010), review denied, — S.W.3d —, 2011 Ark. LEXIS 397 (Ark. May 12, 2011).

Heirship Action.

In a case where heirship was being determined, the action was not barred by the limitations periods in § 18-61-101 and this section because the time period did not begin to run until a pecuniary consequence arose; there had been no demand for the trust property that would have triggered the limitations period. Moreover, the case was filed within the limitations period if it began to run when min-

eral leases were executed. Scroggin v. Scroggin, 103 Ark. App. 144, 286 S.W.3d 758 (2008), rehearing denied, — Ark. App. —, — S.W.3d —, 2008 Ark. App. LEXIS 743 (Oct. 22, 2008), rehearing denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 502 (Mar. 19, 2009).

Unfair Practices Act.

Circuit court correctly applied the five-year statute of limitations to claims under the Arkansas Franchise Practices Act, § 4-72-201 et seq., as neither § 16-56-105 nor this section applied; five-year statute applied because the Arkansas Franchise Practices Act contained no statute of limitations. Miller Brewing Co. v. Ed Roleson, Jr., Inc., 365 Ark. 38, 223 S.W.3d 806 (2006).

Cited: Douglas v. First Student, Inc., 2011 Ark. 463, 385 S.W.3d 225 (2011).

16-56-116. Persons under disabilities at time of accrual of action.

RESEARCH REFERENCES

Ark. L. Rev. Recent Developments: Charitable-Immunity Doctrine — Direct-Action Statute, 59 Ark. L. Rev. 199.

CASE NOTES

Analysis

In General.
Insanity.
Minority.
Statute of Limitations.
Tolling.

In General.

Where the Boy Scouts of America (BSA) failed to inform parents and their injured child about the BSA's insurance coverage and parents failed to include insurer in the suit before the statute of limitations ran, notice was imputed to the insurer; thus, under the circumstances, the second amended complaint related back to the filing of the original complaint and was not barred by the statute of limitations. Low v. Ins. Co. of N. Am., 364 Ark. 427, 220 S.W.3d 670 (2005).

Insanity.

From an alleged victim's suit against his former scoutmaster and several others alleging damages resulting from sexual abuse he suffered 30 years before when he was 11 and 12 years old, judgment in favor of the scoutmaster was proper as repressed memory syndrome did not toll the statute of limitations under this section, and the alleged victim failed to show that the other parties fraudulently concealed facts, or even that they knew, about the scoutmaster's sexual abuse of the alleged victim. Barre v. Hoffman, 2009 Ark. 373, 326 S.W.3d 415 (2009).

Minority.

Where child did not fall within either of the two exceptions for a minor's cause of action under § 16-114-203(c), the complaint brought on his behalf was barred by the two-year statute of limitations in § 16-114-203. Shelton v. Fiser, 340 Ark. 89, 8 S.W.3d 557 (2000).

Statute of Limitations.

Because a general statute must yield when there is a specific statute involving the particular subject matter, in a minor child's medical malpractice action, the two-year statute of limitations in § 16-114-203 applied rather than the three-year statute of limitation in this section. Shelton v. Fiser, 340 Ark. 89, 8 S.W.3d 557 (2000).

Tolling.

Dismissal of the patient's medical malpractice claim was appropriate, in part because her argument that § 16-56-116 allowed the tolling of the statute of limitations for those with disabilities was not presented to the circuit court. Thus, it could not be considered for the first time on appeal. Collins v. St. Vincent, 98 Ark. App. 190, 253 S.W.3d 26 (2007), review denied, — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 422 (May 10, 2007), cert. denied,

Thompson v. St. Vincent Infirmary Med. Ctr., — U.S. —, 128 S. Ct. 233, 169 L. Ed. 2d 174 (2007).

Former wife's claims in her motion for contempt that a former husband failed to comply with certain provisions in their property settlement agreement was barred by the five-year statute of limitations in § 16-56-111 that applied to written contracts as the settlement was an independent contract that did not merge with the divorce decree. The husband's mental health problems were not sufficient to make him insane for purposes of tolling the statute under this section, and in any event, the wife, not the husband, was the one bringing the action. Wall v. Wall, 2011 Ark. App. 143, — S.W.3d — (2011).

16-56-126. Commencement of new action or filing mandate after nonsuit or arrest or reversal of judgment.

CASE NOTES

Analysis

In General.
Applicability.
Complaint Amended.
Dismissal with Prejudice.
Dismissal Without Prejudice.
Entitlement to Privilege.
Nonsuit.
Substitution.
Tolling Statute of Limitations.

In General.

A plaintiff may only invoke this section, Arkansas's savings statute, if the plaintiff files the complaint before the period of limitations has expired and then completes timely service on the defendant against whom the subsequent action is brought. Haynes v. Wire, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 88743 (E.D. Ark. June 27, 2012).

Applicability.

Subdivision (a)(1) of this section did not apply in customer's action against bank for conversion, breach of fiduciary duty, conspiracy, constructive fraud, and fraudulent concealment where the 2002 dismissal of customer's action against its sales manager remained in effect for over one year; the bank was not made a party to any valid lawsuit until 2004. Tech. Ptnrs, Inc. v. Regions Bank, 97 Ark. App. 229, 245 S.W.3d 687 (2006).

Excessive force and deliberate indifference to excessive force claims asserted against two county deputy sheriffs in their individual capacities were time-barred because they were asserted more than three years after the incident giving rise to the claims occurred. This section did not apply to toll the statute of limitations with regard to the claims because in his prior 42 U.S.C.S. § 1983 suit, which was nonsuited, plaintiff did not specifically indicate that he was attempting to hold the sheriffs liable in their individual capacities and, therefore, they were deemed to have been sued in their official capacities only in that suit. Baker v. Chisom, 501 F.3d 920 (8th Cir. 2007), cert. denied, 554 U.S. 902, 128 S. Ct. 2932, 171 L. Ed. 2d 864 (2008).

Savings statute was applicable entitling the patient to refile his medical malpractice suit because his initial attempted service on the surgeon was proper; the return receipt was signed by the surgeon's secretary and the patient not only served the surgeon by certified mail, return receipt requested, restricted delivery, he further sent interrogatories certified mail, return receipt requested, restricted delivery and the secretary signed for those documents as the surgeon's agent. McCoy v. Montgomery, 370 Ark. 333, 259 S.W.3d 430 (2007).

Arkansas savings statute does not apply in workers' compensation cases. Single Source Transp. v. Kent, 99 Ark. App. 153, 258 S.W.3d 416 (2007).

While it could be considered that the employee suffered a nonsuit as required in subdivision (a)(1) of this section, the statute did not apply because it also required that the employee's slander action against the partnership be commenced within the time respectively prescribed for slander claims, which was one year, as provided in § 16-56-104(3). The employee did not allege defamation against the partnership

in either his discrimination complaint, his third-party complaint, or his amended complaint. Roeben v. BG Excelsior Ltd. P'ship, 2009 Ark. App. 646, 344 S.W.3d 93 (2009), rehearing denied, Roeben v. Sneed, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 919 (Nov. 11, 2009), rehearing denied, Roeben v. Snellgrove, — Ark. App. —, — S.W.3d —, 2009 Ark. App. LEXIS 917 (Nov. 11, 2009).

Complaint Amended.

Following a voluntary nonsuit, the filing of an amended complaint satisfied the requirement of the savings statute, codified at subdivision (a)(1) of this section, that a new action be commenced within one year where the amended complaint was filed within the one-year period and timely service was completed as required by Ark. R. Civ. P. 4. Tucker v. Sullivant, 2010 Ark. 170, 370 S.W.3d 812 (2010), rehearing denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 291 (May 20, 2010).

Dismissal with Prejudice.

Court rejected parents' claim that dismissal of their amended medical malpractice claim against hospital and doctor for failure to comply with the service requirements of Ark. R. Civ. P. 4 should have been without prejudice; the parents' failure to comply with the service of process requirements resulted in a failure to commence their medical malpractice action and effectuate the one-year savings provision in this section, Posey v. St. Bernard's Healthcare, Inc., 365 Ark. 154, 226 S.W.3d 757 (2006).

Dismissal Without Prejudice.

Because an accident victim filed his complaint during the limitations period and served it timely, albeit imperfectly, under Ark. R. Civ. P. 4, he was entitled to the one-year grace period provided by the saving statute, subdivision (a)(1) of this section, and therefore the case was properly dismissed without prejudice, allowing him to refile. McCoy v. Bodiford, 2010 Ark. App. 152, — S.W.3d — (2010).

Entitlement to Privilege.

Because this savings statute protected those who in good faith filed and timely served an action who would otherwise suffer a complete loss of relief on the merits due to a procedural defect, plaintiff's complaint was timely filed, and despite service being defective, the action was commenced for purposes of the savings statute. Rettig v. Ballard, 2009 Ark. 629, 362 S.W.3d 260 (2009), rehearing denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 49 (Jan. 21, 2010).

Nonsuit.

Dismissal of the patient's medical malpractice claim was appropriate because it was untimely under § 16-56-126(a)(1) since Ark. R. Civ. P. 41(a)(1) stated that the one-year period began when the circuit court entered an order granting the non-suit; additionally, Ark. R. Civ. P. 58 did not require courts to notify parties of the entry of an order of judgment. The patient also offered no proof that the hospital's attorney defrauded her or intended to defraud her in any way when he told her that the signing date was the date from which the statute would run. Collins v. St. Vincent, 98 Ark. App. 190, 253 S.W.3d 26 (2007), review denied, — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 422 (May 10, 2007), cert. denied, Thompson v. St. Vincent Infirmary Med. Ctr., — U.S. —, 128 S. Ct. 233, 169 L. Ed. 2d 174 (2007).

Appellee's counterclaim for quiet title was not barred by subdivision (a)(1) of this section as a prior court did not treat appellee's affirmative defense of adverse possession as a counterclaim under § 18-61-101(a), and the nonsuit of the prior action did not affect the statute of limitations, which had not begun to run on the quiet title claim as appellee was still in possession of the property. Sutton v. Gardner, 2011 Ark. App. 737, 387 S.W.3d 185 (2011).

Savings statute did not give an estate administrator a year to file a wrongful death suit following the Arkansas Workers' Compensation Commission's dismissal of a workers' compensation claim, as the Commission's decision was not a "nonsuit"; the Commission denied the claim on the merits. Frisby v. Milbank Mfg. Co., 688 F.3d 540 (8th Cir. 2012).

Substitution.

In a claim brought against the suppliers of a pain pump, a dismissal was proper because a wife, as a patient's administratrix, did not seek substitution under Fed. R. Civ. P. 25 prior to a nonsuit of the case when it was pending in federal court.

Therefore, the patient and his wife did not receive the benefit of this section. Wilson v. Lincare, Inc., 103 Ark. App. 329, 288 S.W.3d 708 (2008), review denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 723 (Apr. 2, 2009).

Tolling Statute of Limitations.

Trial court erred in granting state's motion to strike appellant's motion to dismiss a forfeiture action because, after voluntarily dismissing its first forfeiture complaint for failure to complete service of process, the state neglected to toll the limitations period to invoke the one-year savings statute because it did not file the forfeiture complaint within the 120-day period required by § 5-64-505(3). Mitchell v. State, 94 Ark. App. 304, 229 S.W.3d 583 (2006).

Circuit court properly dismissed a patient's negligent treatment case against a chiropractor without prejudice to being refiled where the patient had commenced his case under Ark. R. Civ. P. 3 by completing timely, but defective, service, and thus, he was entitled to the shelter of subdivision (a)(1) of this section. Clouse v. Tu, 101 Ark. App. 260, 274 S.W.3d 344 (2008), review denied, Clouse v. Ngau Van Tu, 2008 Ark. LEXIS 421 (Ark. June 19, 2008).

Because the court denied class certification under Fed. R. Civ. P. 23 in an earlier filed case on the ground that the named plaintiffs were not typical of or adequate representatives for the class, it was not a reason equally applicable to any later suit, so American Pipe applied and the statute of limitations was tolled by the prior action. Under this section, the Arkansas's savings statute, the tolling gave plaintiffs one year after certification was denied in the prior action to commence a new action and receive the full protection of the prior action, and because plaintiffs filed the instant action within that year, they received the maximum benefit of the tolling, except that they could not recover from any further back than October 1, 2006, because prior to October 1, 2006, the employer was exempt from the Arkansas Minimum Wage Act as it was subject to the minimum wage and overtime provisions of the Fair Labor Standards Act. Garner v. Butterball, LLC, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 21859 (E.D. Ark. Feb. 22, 2012).

In a foreclosure case involving a construction loan, summary judgment was properly granted on the borrower's nonsuited counterclaims for negligence and interference with business expectancies, which were untimely under § 16-56-105 because they were filed more than three years after the lender refused further funding of the loan and were not saved by this section because they were filed more than two years after the voluntary nonsuit. Grand Valley Ridge, LLC v. Metro. Nat'l Bank, 2012 Ark. 121, 388 S.W.3d 24 (2012).

Cited: Wright v. City of Little Rock, 366 Ark. 96, 233 S.W.3d 644 (2006); Recinos v. Zelk, 369 Ark. 7, 250 S.W.3d 221 (2007); Barrows v. City of Fort Smith, 2010 Ark. 73, 360 S.W.3d 117 (2010).

CHAPTER 58

COMMENCEMENT OF ACTION — PROCESS

16-58-103. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as "SECTION 2".

Publisher's Notes. This section, concerning summons generally, was repealed by Acts 2013, No. 1148, § 20[21]. The section was derived from Civil Code, §§ 60, 61, 762; C. & M. Dig., §§ 1127, 1137, 1138; Pope's Dig., §§ 1343, 1353, 1354; A.S.A. 1947, §§ 27-310, 27-312, 27-313.

16-58-120. Method of service — Resident and nonresident defendants out of state — Secretary of State agent.

RESEARCH REFERENCES

ALR. Service of Process Via Computer or Fax. 30 A.L.R.6th 413.

CASE NOTES

Applicability.

As appellant failed to personally serve appellee and thus did not attach a return receipt to the writ of process and file it in the clerk's office, it could not avail itself of the long-arm statute. Pulaski Choice, L.L.C. v. 2735 Villa Creek, L.P., 2010 Ark. App. 451, 376 S.W.3d 500 (2010).

Appellant could not avail itself of the long-arm statute as this section did not apply to in rem proceedings like appellant's quiet title action. Pulaski Choice, L.L.C. v. 2735 Villa Creek, L.P., 2010 Ark. App. 451, 376 S.W.3d 500 (2010).

16-58-121. Method of service — Nonresident or absent owner, chauffeur, driver, or operator — Survival of action.

RESEARCH REFERENCES

ALR. Service of Process Via Computer or Fax. 30 A.L.R.6th 413.

16-58-122. Method of service — Owner or operator of motor buses or trucks.

RESEARCH REFERENCES

ALR. Service of Process Via Computer or Fax. 30 A.L.R.6th 413.

16-58-123. Method of service — Owner or officer of steamboat or watercraft.

RESEARCH REFERENCES

ALR. Service of Process Via Computer or Fax. 30 A.L.R.6th 413.

16-58-124. Method of service — Corporations.

RESEARCH REFERENCES

ALR. Service of Process Via Computer or Fax. 30 A.L.R.6th 413.

16-58-125. Method of service — Corporate agent at branch office.

RESEARCH REFERENCES

ALR. Service of Process Via Computer or Fax. 30 A.L.R.6th 413.

16-58-126. Method of service — Corporations — Secretary of State.

RESEARCH REFERENCES

ALR. Service of Process Via Computer or Fax. 30 A.L.R.6th 413.

16-58-127. Method of service — Foreign corporations.

RESEARCH REFERENCES

ALR. Service of Process Via Computer or Fax. 30 A.L.R.6th 413.

CASE NOTES

Agent.

Debtor who had initiated an adversary proceeding to determine dischargeability of a student loan obligation was entitled to default and a default judgment because the debtor had complied with the service of process requirements of Fed. R. Bankr. P. 7004 and Ark. R. Civ. P. 4(d)(5) when the debtor served an amended summons and complaint on the creditor's designated agent. The debtor was not also required to service process on the creditor itself as well as the agent. Weston v. Ed Fin. Servs., LLC (in re Weston), 398 B.R. 325 (Bankr. E.D. Ark. 2008).

16-58-130. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as "SECTION 2".

Publisher's Notes. This section, concerning constructive service warning orders, was repealed by Acts 2013, No. 1148, § 21[22]. The section was derived from Civil Code, §§ 79-83, 454; Acts 1871, No. 48, § 1 [80], p. 219; 1915, No. 290, §§ 4, 5; C. & M. Dig., §§ 1159-1163, 6269; Pope's Dig., §§ 1380-1384, 8225; A.S.A. 1947, §§ 27-354 — 27-359; Acts 1991, No. 199, § 1.

16-58-134. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as "SECTION 2".

Publisher's Notes. This section, concerning time limit for service, was repealed by Acts 2013, No. 1148, § 22[23]. The section was derived from Acts 1989, No. 401, § 1.

CHAPTER 59

LIS PENDENS

16-59-101. Filing of notice required to constitute constructive notice of pending action.

CASE NOTES

Analysis

Applicability.
Acknowledgment.
Complaint for Money Judgment.
Effect of Filing.
Priorities.

Applicability.

Appellants' mere filing of a notice of lis pendens was ineffective to create any vested rights that would preclude the assertion of a claim for reformation where the notice under the lis pendens statute did not have any application between the parties. The notice under the statute did not establish any lien, or have any application as between the parties, but gave effect to the rights ultimately established by a judgment in the case. Longing Family Revocable Trust v. Snowden, 2013 Ark. App. 81, — S.W.3d — (2013).

Acknowledgment.

As a lis pendens is not an instrument in writing for the conveyance of any real estate or by which any real estate may be affected in law or equity, acknowledgment of the lis pendens is not required under Ark. Code Ann. § 16-47-101. Benefit Bank v. Rogers, 2012 Ark. 419, — S.W.3d —, 2012 Ark. LEXIS 434 (Nov. 8, 2012).

Complaint for Money Judgment.

District court ordered the U.S. Government to remove a notice of lis pendens it filed against defendant's residence, pursuant to this section, after defendant was indicted on charges alleging that he conspired with another person to commit mail fraud, in violation of 18 U.S.C.S. § 1341. Although the indictment charging defendant with conspiracy to commit mail fraud included a forfeiture allegation in the amount of $1,811,490 and gave notice of the Government's intent to seek substitute property, pursuant to 21 U.S.C.S. § 853(p), in the event $1.8 million in cash could not be located with due diligence, the Government's notice of lis pendens was improper under this section because the Government was using defendant's residence as a substitute for a money judgment it was seeking, and this section did not apply to actions seeking money judgments. United States v. Jewell, 556 F. Supp. 2d 962 (E.D. Ark. 2008).

Effect of Filing.

Lis pendens filed under § 16-59-101 et seq. against defendant's residence, which was allegedly subject to forfeiture as substitute property in a criminal case against defendant, was not a seizure or a legal restraint of the property; 21 U.S.C.S. § 853(e) therefore did not prohibit the government from filing the lis pendens prior to conviction. United States v. Jewell, 538 F. Supp. 2d 1087 (E.D. Ark. 2008).

Materials supplier that filed a materialman's lien on property after a bank had filed a foreclosure complaint and a lis pendens on the same property was subject to the lis pendens because the supplier did not obtain an interest in the property prior to the filing of the lis pendens. Nat'l Home Ctrs., Inc. v. Coleman, 373 Ark. 246, 283 S.W.3d 218 (2008).

As a husband voluntarily signed and his wife filed a lis pendens against real property before their divorce was final, litigation relating to the property was clearly pending at the time of the filing; therefore, a bank which later acquired a mortgage on the property was on notice that the property was being litigated in some fashion. Benefit Bank v. Rogers, 2012 Ark. 419, — S.W.3d —, 2012 Ark. LEXIS 434 (Nov. 8, 2012).

Priorities.

As the divorce court did not unilaterally impose a lis pendens on real estate as security for a former husband's payment of spousal support to appellee, but both parties agreed to its being imposed, the lis

pendens was valid and appellee's interest in the property was senior to that of a bank which later acquired a mortgage on that property. Benefit Bank v. Rogers, 2012 Ark. 419, — S.W.3d —, 2012 Ark. LEXIS 434 (Nov. 8, 2012).

16-59-102. Contents of notice.

CASE NOTES

Cited: Benefit Bank v. Rogers, 2012 Ark. 419, — S.W.3d —, 2012 Ark. LEXIS 434 (Nov. 8, 2012).

CHAPTER 60

VENUE

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

Effective Dates. Acts 2013, No. 1315, § 3: Apr. 18, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that school district litigation is a complex and costly endeavor; that a new venue statute would resolve many issues regarding where a lawsuit should be brought; and that this act is immediately necessary because future litigants are currently relying on venue statutes that would require litigation in an inconvenient forum. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

16-60-101. Actions brought where subject of action situated.

CASE NOTES

Writ of Prohibition.

In a case in which respondents filed a lawsuit in White County, Arkansas, against the Arkansas Game and Fish Commission (AGFC), seeking an injunction enjoining the AGFC from leasing, conveying, encumbering, or otherwise transferring mineral rights to certain land, a writ of prohibition that was sought by the AGFC was not appropriate. This section and § 16-60-103 provided the circuit court with the authority to conclude

that venue was proper in White County. Ark. Game Fish Comm'n v. Mills, 371 Ark. 317, 265 S.W.3d 760 (2007).

16-60-103. Actions which must be brought in Pulaski County.

The following actions must be brought in the county in which the seat of government is situated:

(1) All civil actions in behalf of the state, or which may be brought in the name of the state, or in which the state has or claims an interest, except as provided in § 16-106-101;

(2) All actions brought by state boards, state commissioners, or state officers in their official capacity, or on behalf of the state, except as provided in § 16-106-101;

(3) All actions against the state and all actions against state boards, state commissioners, or state officers on account of their official acts, except that if an action could otherwise be brought in another county or counties under the venue laws of this state, as provided in § 16-60-101 et seq., then the action may be brought either in Pulaski County or the other county or counties;

(4) All civil actions brought against an organization that regulates extracurricular interscholastic activities in grades seven through twelve (7-12) in both public and private schools if the organization's main administrative office is located in Pulaski County; and

(5) All other actions required by law to be brought in Pulaski County.

History. Civil Code, § 90; Acts 1871, No. 48, § 1 [90], p. 219; A.S.A. 1947, § 27-603; Acts 2001, No. 806, § 1; 2003, No. 1185, § 190; 2011, No. 600, § 1.

Amendments. The 2011 amendment added present (4) and redesignated former (4) as (5).

CASE NOTES

Analysis

Actions Against Administrative Agency.
Actions Against State, Etc.

Actions Against Administrative Agency.

In a case in which respondents filed a lawsuit in White County, Arkansas, against the Arkansas Game and Fish Commission (AGFC), seeking an injunction enjoining the AGFC from leasing, conveying, encumbering, or otherwise transferring mineral rights to certain land, a writ of prohibition that was sought by the AGFC was not appropriate. Section 16-60-101 and this section provided the circuit court with the authority to conclude that venue was proper in White County. Ark. Game Fish Comm'n v. Mills, 371 Ark. 317, 265 S.W.3d 760 (2007).

Actions Against State, Etc.

Where candidate filed a petition for qualification as an independent candidate for the office of Arkansas House of Representatives and his petition was denied because it did not contain the required number of verified signatures, the candidate erred by filing a civil rights action against the Arkansas Secretary of State in the Phillips County Circuit Court; subdivision (3) of this section required the suit to be filed in Pulaski County, Arkansas. Daniels v. Weaver, 367 Ark. 327, 240 S.W.3d 95 (2006).

Trial court properly dismissed plaintiff's complaint against the Arkansas State Police, which asserted an illegal-exaction claim, because venue was improper; because the State Police could best be described as a "governmental enterprise," venue was proper in the county in which

the seat of government was situated pursuant to subdivision (3) of this section.

McCutchen v. Ark. State Police, 2009 Ark. 204, 307 S.W.3d 582 (2009).

16-60-104. Actions against corporations.

CASE NOTES

Proper County.

Circuit court erred by fixing venue for property owners' association suit against business owners for shortages and unpaid bills in Garland County, since the complaint did not allege that the restaurant was doing business in or was situated there in 2004, when the suit was filed; moreover, the association served the business by serving the corporation's president at his home, not his restaurant, which was in Saline County. JB Wayne, Inc. v. Hot Springs Village Prop. Owners' Ass'n, 97 Ark. App. 288, 248 S.W.3d 503 (2007).

16-60-111. Actions on debt, account, or note.

(a)(1) An action on a debt, account, or note, or for goods or services may be brought in the county where the defendant resided at the time the cause of action arose.

(2) However, if a city of the first class, a city of the second class, an incorporated town, a public facilities board, or a county is the defendant, the action shall be brought in the county in which the city, town, public facilities board, or county lies.

(b) In all such actions, summons may be served upon the defendant in any county in this state.

(c) The provisions of this section are cumulative to the venue laws of the State of Arkansas and shall not amend or repeal any other laws unless expressly in conflict therewith.

History. Acts 1977, No. 401, §§ 1-3; A.S.A. 1947, §§ 27-621 — 27-623; Acts 2007, No. 549, § 1; 2009, No. 546, § 1.

Amendments. The 2009 amendment inserted "a public facilities board" and "public facilities board" in (a)(2), and made a related change.

CASE NOTES

Review.

Even though an issue relating to venue was not waived because a compulsory counterclaim under Ark. R. Civ. P. 13(a) was filed, instead of a permissive counterclaim, an appellate court still could not reach the issue on review because an argument regarding whether § 16-55-213(a) repealed subdivision (a)(1) of this section by implication was not raised below. In the motion for a change of venue, it was argued that the matter should have been transferred to a county where an executrix was a resident since the cause of action arose there, all witnesses resided there, and the official record and other matters related to the case were on record there. Richardson v. Brown, 2012 Ark. App. 535, — S.W.3d — (2012).

16-60-112. Actions for personal injury or death.

CASE NOTES

Residence.

Trial court properly dismissed a personal representative's wrongful death action for improper venue because under subsection (a) of this section and § 16-55-213(a)(3)(A), venue was proper where a tenant resided at the time of death from carbon monoxide poisoning; such an interpretation harmonized both statutes and avoided the disfavored result of repeal by implication. Wright v. Centerpoint Energy Res. Corp., 372 Ark. 330, 276 S.W.3d 253 (2008).

16-60-113. Actions for damage to, or conversion of, personal property — Actions for fraud.

CASE NOTES

Analysis

Applicability.
Fraud.
Venue Improper.

Applicability.

Property owners' association's complaint against business owners did not allege physical damage to tangible personal property sufficient to bring the case within reach of § 16-60-113(a); it simply sought to hold the owners to their promise to pay for the shortage when the lease ended. JB Wayne, Inc. v. Hot Springs Village Prop. Owners' Ass'n, 97 Ark. App. 288, 248 S.W.3d 503 (2007).

Fraud.

Where a writ of prohibition entered in the court's prior decision required the circuit court to dismiss the representative of the Arkansas consumers from the case, no basis existed for venue over the only remaining named plaintiff; venue was not proper under subsection (b) of this section because there was nothing on the face of the complaint connecting any alleged fraudulent activity perpetrated in relation to the remaining plaintiff and the Texas consumers. Centerpoint Energy, Inc. v. Miller County Circuit Court, 372 Ark. 343, 276 S.W.3d 231 (2008).

Venue Improper.

Dismissal for improper venue under Ark. R. Civ. P. 12(b)(3) of a complaint alleging fraud in the inducement of contract was not erroneous because forum-selection clauses designated Kansas as governing law and in both Arkansas and Kansas a party had to plead fraud in the inducement of a forum-selection clause itself to avoid its application. Provence v. Nat'l Carriers, Inc., 2010 Ark. 27, 360 S.W.3d 725 (2010).

16-60-115. Action by insured or beneficiary against surety on contractor's performance bond.

CASE NOTES

Improper Venue.

Subcontractor's suit against general contractor's surety, brought in Arkansas despite a forum selection clause in the subcontract naming Florida as the exclusive venue, was properly dismissed for improper venue under M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 92 S.Ct. 1907, 32 L. Ed. 2d 513 (1972) and neither public policy nor inconvenience warranted a different result on appeal; this section specifically applied to state proper venue for an action against a surety on a contractor's payment or performance bond. Servewell Plumbing, LLC v. Fed. Ins. Co., 439 F.3d 786 (8th Cir. 2006).

16-60-116. Other actions — County where defendant resides or is summoned — Effective service.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Annual Survey of Case Law: Family Law, 29 U. Ark. Little Rock L. Rev. 883.

CASE NOTES

Repeal by Implication.

Section 16-55-213(a) repealed by implication an older venue statute, subsection (a) of this section: § 16-55-213(a) established a new general rule for venue different from the former rule, creating an irreconcilable conflict, and the reference to "all civil actions" demonstrated an intent to adopt a new venue scheme. Dotson v. City of Lowell, 375 Ark. 89, 289 S.W.3d 55 (2008).

16-60-119. Actions against a public school district.

An action, other than an action described in § 16-60-103 or § 16-60-112, against a public school district, a public school district board of directors, or a public school district's officer, agent, servant, or employee acting within the course and scope of his or her agency or employment shall be brought in the county or in the judicial district of the county in which the public school district is situated or has its principal office.

History. Acts 2013, No. 1315, § 2.

CHAPTER 61

PARTIES

SUBCHAPTER.

1. General Provisions.
2. Uniform Contribution Among Tortfeasors Act.

Subchapter 1 — General Provisions

SECTION.

16-61-101. [Repealed.]
16-61-103 — 16-61-106. [Repealed.]
16-61-108. [Repealed.]
16-61-113 — 16-61-115. [Repealed.]

16-61-101. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as "SECTION 2".

Publisher's Notes. This section, concerning the designation of parties, was repealed by Acts 2013, No. 1148, § 23[24]. The section was derived from Civil Code, § 2; C. & M. Dig., § 1032; Pope's Dig., § 1234; A.S.A. 1947, § 27-203.

16-61-103 — 16-61-106. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as "SECTION 2".

Publisher's Notes. These sections, concerning actions against infants and insane persons, were repealed by Acts 2013, No. 1148, §§ 24[25]–27[28]. The sections were derived from:

16-61-103. Civil Code, §§ 46, 47; C. & M. Dig. §§ 1111, 1112; Pope's Dig., §§ 1327, 1328; A.S.A. 1947, §§ 27-823, 27-824.

16-61-104. Civil Code, §§ 48, 50; Acts 1871, No. 48, § 1 [50], p. 219; C. & M. Dig., §§ 1113, 1115; Pope's Dig., §§ 1329, 1331; A.S.A. 1947, §§ 27-825, 27-827.

16-61-105. Civil Code, §§ 51, 52; C. & M. Dig., §§ 1116, 1117; Pope's Dig., §§ 1332, 1333; A.S.A. 1947, §§ 27-828, 27-829.

16-61-106. Civil Code, §§ 53, 54; C. & M. Dig., §§ 1118, 1119; Pope's Dig., §§ 1334, 1335; A.S.A. 1947, §§ 27-830, 27-831.

16-61-107. Insanity during pendency of action — Guardian joined.

CASE NOTES

Proper Party.

Because plaintiff individual was not the proper party to pursue the tort claims against defendants due to her incompetency, and she did not move to substitute the proper party after being put on notice of the need for substitution, the district court did not err in dismissing the claims. Kuelbs v. Hill, 615 F.3d 1037 (8th Cir. 2010).

16-61-108. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as "SECTION 2".

Publisher's Notes. This section, concerning guardian ad litem appointments and disqualification of certain parties and attorneys for infants or insane persons, was repealed by Acts 2013, No. 1148, § 28[29]. The section was derived from Civil Code, § 49; C. & M. Dig., § 1114; Pope's Dig., § 1330; A.S.A. 1947, § 27-826.

16-61-109. Fees of guardian or attorney appointed to defend infant, insane person, or prisoner — Costs.

CASE NOTES

In General.

Finding against appellants in an action concerning property transfers was proper where it was determined that the circuit court was exercising its equitable power when it ordered that fees be taxed as costs against them. Middleton v. Lockhart, 364 Ark. 32, 216 S.W.3d 98 (2005).

16-61-110. Foreign executors, administrators, and guardians.

CASE NOTES

Appointment.

Son, a foreign administrator of his mother's estate, was subject to the requirements for domiciliary personal representatives found in §§ 28-48-101 through 28-48-109, pursuant to this section. Because the son had not been appointed administrator of his mother's estate in any state at the time he filed his original complaint for trespass and con-

version of timber, he did not have standing to sue; because the complaint was a nullity, a second complaint could not relate back under Ark. R. Civ. P. 15(c). Travis Lumber Co. v. Deichman, 2009 Ark. 299, 319 S.W.3d 239 (2009), rehearing denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 480 (June 25, 2009).

16-61-113 — 16-61-115. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as "SECTION 2".

Publisher's Notes. These sections, concerning interpleader, were repealed by Acts 2013, No. 1148, §§ 29[30]–31[32]. The sections were derived from:

16-61-113. Civil Code, § 37; C. & M. Dig., § 1102; Pope's Dig., § 1318; A.S.A. 1947, § 27-815.

16-61-114. Civil Code, § 38; Acts 1875 (Adj. Sess.), No. 32, § 1, p. 36; C. & M. Dig., §§ 1103, 1104; Pope's Dig., §§ 1319, 1320; A.S.A. 1947, §§ 27-817, 27-818.

16-61-115. Civil Code, §§ 39, 40; C. & M. Dig., §§ 1105, 1106; Pope's Dig., §§ 1321, 1322; A.S.A. 1947, §§ 27-819, 27-820.

Subchapter 2 — Uniform Contribution Among Tortfeasors Act

A.C.R.C. Notes. The amendments to this subchapter by Acts 2013, No. 1116, were not official amendments to the Uniform Contribution Among Tortfeasors Act promulgated by the National Conference of Commissioners on Uniform State Laws. As a result, this subchapter substantially deviates from the official version of the Uniform Contribution Among Tortfeasors Act.

Effective Dates. Acts 2013, No. 1116, § 8: Aug. 16, 2013. Effective date clause provided: "This act is remedial in nature and applies to all causes of action accruing on or after March 25, 2003."

16-61-201. Definitions.

As used in this subchapter:

(1) "Joint tortfeasor" means two (2) or more persons or entities who may have joint liability or several liability in tort for the same injury to person or property, whether or not judgment has been recovered against all or some of them; and

(2) "Several liability" means that each person or entity is liable only for the amount of damages allocated to that defendant in direct proportion to that defendant's percentage of fault.

History. Acts 1941, No. 315, § 1; A.S.A. 1947, § 34-1001; Acts 2013, No. 1116, § 2.

A.C.R.C. Notes. Acts 2013, No. 1116, § 1, provided: "Legislative intent. It is the intent of the General Assembly that the rights afforded to joint tortfeasors by this act apply with equal force after the modification of joint and several liability as provided in § 16-55-201, and that none of the rights granted to join tortfeasors by this act, including allocation of fault and credits for settlements entered into by other joint tortfeasors, shall be denied to joint tortfeasors."

Amendments. The 2013 amendment rewrote the section and the section heading.

Effective Dates. Acts 2013, No. 1116, § 8: Aug. 16, 2013. Effective date clause provided: "This act is remedial in nature and applies to all causes of action accruing on or after March 25, 2003."

CASE NOTES

Joint Tortfeasors.

Summary judgment was improperly granted in a contribution case arising from the distribution of an estate and a trust as a beneficiary could have been a joint tortfeasor based on an allegation of civil conspiracy. Heinemann v. Hallum, 365 Ark. 600, 232 S.W.3d 420 (2006).

In a second trial, the judge was correct in refusing to credit $60,000 paid by an insurance company in the first trial because the other defendant, an insurance brokerage acting as the agent for the company, and the company were not joint tortfeasors; the jury only found the agent liable for deceit and the appellate court could not tell whether the damages awarded against the insurance company and the damages awarded against the agent compensated the policy purchaser for the "same injury to person or property." Aon Risk Servs. v. Mickles, 96 Ark. App. 369, 242 S.W.3d 286 (2006).

Hospital did not have a right of contribution under the Uniform Contribution among Tortfeasors Act (UCATA) because the hospital and the rehabilitation center were not joint tortfeasors under the UCATA, as there was only several liability following the enactment of the Civil Justice Reform Act of 2003 (CJRA). St. Vincent Infirmary Med. Ctr. v. Shelton, 2013 Ark. 38, — S.W.3d — (2013).

16-61-202. Right of contribution — Accrual — Pro rata share.

(a) The right of contribution exists among joint tortfeasors.

(b) A joint tortfeasor is not entitled to a money judgment for contribution until he or she has by payment discharged the common liability or has paid more than his or her pro rata share of the common liability.

(c) The right of contribution is not limited to money damages but also includes the right to an allocation of fault as among all joint tortfeasors and the rights provided for in § 16-61-204.

(d) A joint tortfeasor who enters into a settlement with the injured person is not entitled to recover contribution from another joint tortfeasor whose liability to the injured person is not extinguished by the settlement.

History. Acts 1941, No. 315, § 2; 1949, No. 35, § 1; A.S.A. 1947, § 34-1002; Acts 2013, No. 1116, § 3.

A.C.R.C. Notes. Acts 2013, No. 1116, § 1, provided: "Legislative intent. It is the intent of the General Assembly that the rights afforded to joint tortfeasors by this act apply with equal force after the modification of joint and several liability as provided in § 16-55-201, and that none of the rights granted to join tortfeasors by this act, including allocation of fault and credits for settlements entered into by other joint tortfeasors, shall be denied to joint tortfeasors."

Amendments. The 2013 amendment

redesignated former (1) through (3) as (a), (b), and (d); substituted "of the common liability" for "thereof" in (b); inserted (c); and deleted former (4).

Effective Dates. Acts 2013, No. 1116, § 8: Aug. 16, 2013. Effective date clause provided: "This act is remedial in nature and applies to all causes of action accruing on or after March 25, 2003."

CASE NOTES

Analysis

Applicability.
Limitation of Actions.

Applicability.

Hospital did not have a right of contribution under the Uniform Contribution among Tortfeasors Act (UCATA) because the hospital and the rehabilitation center were not joint tortfeasors under the UCATA, as there was only several liability following the enactment of the Civil Justice Reform Act of 2003 (CJRA). St. Vincent Infirmary Med. Ctr. v. Shelton, 2013 Ark. 38, — S.W.3d — (2013).

Limitation of Actions.

A cause of action for contribution accrues when one joint tortfeasor pays more than his or her pro rata share of common liability; thus, the three-year statute of limitations under § 16-56-105 had not yet expired due to the fact that a settlement had just been entered where an executor and his wife agreed to pay more of their fair share in a trust dispute. Heinemann v. Hallum, 365 Ark. 600, 232 S.W.3d 420 (2006).

16-61-203. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1116, § 1, provided: "Legislative intent. It is the intent of the General Assembly that the rights afforded to joint tortfeasors by this act apply with equal force after the modification of joint and several liability as provided in § 16-55-201, and that none of the rights granted to join tortfeasors by this act, including allocation of fault and credits for settlements entered into by other joint tortfeasors, shall be denied to joint tortfeasors."

Publisher's Notes. This section, concerning judgment against one tortfeasor, was repealed by Acts 2013, No. 1116, § 4. The section was derived from Acts 1941, No. 315, § 3; A.S.A. 1947, § 34-1003.

Effective Dates. Acts 2013, No. 1116, § 8: Aug. 16, 2013. Effective date clause provided: "This act is remedial in nature and applies to all causes of action accruing on or after March 25, 2003."

16-61-204. Release — Effect on injured person's claim and on right of contribution.

(a) A release by the injured person of one (1) joint tortfeasor, whether before or after judgment, does not discharge the other joint tortfeasors unless the release so provides.

(b) A release by the injured person of a joint tortfeasor does not relieve the released tortfeasor from liability to make contribution to another joint tortfeasor unless the release is given before the right of the other joint tortfeasor to secure a money judgment for contribution has accrued and provides for a reduction, to the extent of the pro rata share of the released joint tortfeasor, of the injured person's damages recoverable against all other joint tortfeasors.

(c) When the injured person releases a joint tortfeasor, the injured person's damages recoverable against all the other joint tortfeasors shall be reduced by the greatest of the following:

(1) The amount of the consideration paid for the release;

(2) The pro rata share of the released joint tortfeasor's responsibility for the injured person's damages; or

(3) Any amount or proportion by which the release provides that the total claim shall be reduced.

(d) When the injured person releases a joint tortfeasor, the remaining defendants are entitled to a determination by the finder of fact of the released joint tortsfeasor's pro rata share of responsibility for the injured person's damages.

History. Acts 1941, No. 315, § 4; A.S.A. 1947, § 34-1004; Acts 2013, No. 1116, § 5.

A.C.R.C. Notes. Acts 2013, No. 1116, § 1, provided: "Legislative intent. It is the intent of the General Assembly that the rights afforded to joint tortfeasors by this act apply with equal force after the modification of joint and several liability as provided in § 16-55-201, and that none of the rights granted to join tortfeasors by this act, including allocation of fault and credits for settlements entered into by other joint tortfeasors, shall be denied to joint tortfeasors."

Amendments. The 2013 amendment rewrote the section and added "and on right of contribution" to the section heading.

Effective Dates. Acts 2013, No. 1116, § 8: Aug. 16, 2013. Effective date clause provided: "This act is remedial in nature and applies to all causes of action accruing on or after March 25, 2003."

CASE NOTES

Analysis

Agreements.
Release.

Agreements.

Injured patient and a hospital agreed that they would inform the jury about a nurse anesthetist's settlement with the patient and that the hospital would waive its right to a credit; in other words, they agreed that the jury would solely determine the hospital's liability and award monetary damages for harm caused by the hospital. An appellate court therefore refused to grant the patient's request that the jury assess the hospital's share alone and that the hospital pay its fair share of the damages. Villines v. N. Ark. Reg'l Med. Ctr., 2011 Ark. App. 506, 385 S.W.3d 360 (2011), rehearing denied, — S.W.3d —, 2011 Ark. App. LEXIS 688 (Ark. Ct. App. Oct. 26, 2011).

Release.

In a medical malpractice case, a release executed by a patient and a hospital was insufficient to release a doctor from liability under this section based on language in the release referencing the hospital's employees. Luu v. Still, 102 Ark. App. 11, 279 S.W.3d 481 (2008), rehearing denied, — Ark. App. —, — S.W.3d —, 2008 Ark. App. LEXIS 336 (Apr. 23, 2008), review denied, — Ark. —, — S.W.3d —, 2008 Ark. LEXIS 579 (Sept. 4, 2008).

16-61-205. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1116, § 1, provided: "Legislative intent. It is the intent of the General Assembly that the rights afforded to joint tortfeasors by this act apply with equal force after the modification of joint and several liability as provided in § 16-55-201, and that none of the rights granted to join tortfeasors by this act, including allocation of fault and credits for settlements entered into by other joint tortfeasors, shall be denied to joint tortfeasors."

Publisher's Notes. This section, concerning releases and the effect on right of contribution was repealed by Acts 2013, No. 1116, § 6. The section was derived from Acts 1941, No. 315, § 5; A.S.A. 1947, § 34-1005.

Effective Dates. Acts 2013, No. 1116, § 8: Aug. 16, 2013. Effective date clause provided: "This act is remedial in nature and applies to all causes of action accruing on or after March 25, 2003."

16-61-207. Third party practice — Amended complaints — Counterclaims and cross-complaints — Motion practice.

(1) Before answering, a defendant seeking contribution in a tort action may move ex parte or, after answering, on notice to the plaintiff, for leave as a third party plaintiff to serve a summons and complaint upon a person not a party to the action who is or may be liable as a joint tortfeasor to him or her to the plaintiff for all or part of the plaintiff's claim against him or her. If the motion is granted and the summons and complaint are served, the person so served, hereinafter called the third party defendant, shall make his or her defense to the complaint of the plaintiff and to the third party complaint in the same manner as defenses are made by an original defendant to an original complaint. The third party defendant may assert any defenses which the third party plaintiff has to the plaintiff's claim. The plaintiff may amend his or her pleadings to assert against the third party defendant any claim which the plaintiff might have asserted against the third party defendant had he or she been joined originally as a defendant. The third party defendant is bound by the adjudication of the third party plaintiff's liability to the plaintiff as well as of his or her own liability to the plaintiff and to the third party plaintiff. A third party defendant may proceed under this section against any person not a party to the action who is or may be liable as a joint tortfeasor to him or her or to the third party plaintiff for all or part of the claim made in the action against the third party defendant.

(2) When a counterclaim is asserted against a plaintiff he or she may cause a third party to be brought in under circumstances which under this section would entitle a defendant to do so.

(3) A pleader may either (a) state as a cross-claim against a coparty any claim that the coparty is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant; or (b) move for judgment for contribution against any other joint judgment debtor, where in a single action a judgment has been entered against joint tortfeasors one (1) of whom has discharged the judgment by payment or has paid more than his or her pro rata share thereof. If relief can be obtained as provided in this subsection no independent action shall be maintained to enforce the claim for contribution.

(4) The court may render such judgments, one (1) or more in number, as may be suitable under the provisions of this subchapter.

(5) [Repealed.]

(6) In the event plaintiff or defendant fails to serve third parties in such time and manner as may be required for third parties to be brought in and for service on the same to have matured on the day set for the original proceedings between the original parties, such failure

shall not delay prosecution of proceedings between the original parties or impair the original defendant's right of contribution.

History. Acts 1941, No. 315, § 7; A.S.A. 1947, § 34-1007; Acts 1993, No. 759, § 1; 2013, No. 1116, §§ 1, 7, 8.

A.C.R.C. Notes. Acts 2013, No. 1116, § 1, provided: "Legislative intent. It is the intent of the General Assembly that the rights afforded to joint tortfeasors by this act apply with equal force after the modification of joint and several liability as provided in § 16-55-201, and that none of the rights granted to join tortfeasors by this act, including allocation of fault and credits for settlements entered into by other joint tortfeasors, shall be denied to joint tortfeasors."

Amendments. The 2013 amendment repealed (5).

Effective Dates. Acts 2013, No. 1116, § 8: Aug. 16, 2013. Effective date clause provided: "This act is remedial in nature and applies to all causes of action accruing on or after March 25, 2003."

CHAPTER 62

SURVIVAL AND ABATEMENT OF ACTIONS

16-62-101. Survival of actions — Wrongs to person or property.

RESEARCH REFERENCES

Ark. L. Rev. Note, The Measure of Life: Determining the Value of Lost Years After Durham v. Marberry, 59 Ark. L. Rev. 125.

CASE NOTES

Analysis

Construction.
Administration of Estate.
Death of Party.
Evidence.
Medical Malpractice.
Multiple Actions.
Parties.

Construction.

Decedent died when his vehicle hit the back of a farm tractor on a highway; on appeal, the administratrix of the decedent's estate raised the issue of whether the circuit court erred in ruling that the wrongful-death statute allowing recovery of loss-of-life damages did not apply retroactively. The language included in § 16-62-101(b) was added by Acts 2001, No. 1516; however, the Act added only a new remedy to an already existing right, the act was meant to be applied retroactively, and the ruling of the circuit court on this issue was also error. McMickle v. Griffin, 369 Ark. 318, 254 S.W.3d 729 (2007).

Acts 2001, No. 1516 is meant to be applied retroactively. McMickle v. Griffin, 369 Ark. 318, 254 S.W.3d 729 (2007).

Administration of Estate.

Wrongful death and survival action filed by decedent's mother on behalf of herself and decedent was neither brought by and in the name of an appointed personal representative of decedent nor were decedent's brother and biological father (both statutory beneficiaries under § 16-62-102(d)), joined as plaintiffs as required for a wrongful death action under § 16-62-102(b). Further, neither the mother nor anyone else had been appointed an administrator or executor as required for a survival action under this section; therefore, at the time the mother filed the action, she did not have standing to pur-

sue the claims against defendants. Farrow v. Sammis, — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 90429 (E.D. Ark. Dec. 7, 2007).

Regarding a father's motion to intervene in a mother's wrongful death and survivor action for the sole purpose of seeking to stay the proceedings pending a determination from the probate court as to who would be named administrator of decedent son's estate, Ark. R. Civ. P. 17 had no application because the action was not filed in accordance with § 16-62-102(b) or this section and the original complaint thus was a nullity. When the original complaint was a nullity, Ark. R. Civ. P. 17 was inapplicable because the original complaint never existed and, therefore, there was no pleading to amend. Farrow v. Sammis, — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 90429 (E.D. Ark. Dec. 7, 2007).

Death of Party.

In a patient's medical malpractice suit against her since-deceased surgeon and the hospital, the appellate court granted the patient's motion to appoint the surgeon's widow as the special administratrix of the surgeon's estate for purposes of defending the case, reviving the case, and substituting the special administratrix in the surgeon's stead because the patient's personal-injury claims survived the surgeon's death under subdivision (a)(1) of this section. Section 16-62-106(a) gave the appellate court authority to appoint the widow, and the widow consented to stand in place of the surgeon. Taylor v. Landherr, 101 Ark. App. 279, 275 S.W.3d 656 (2008).

Subdivision (a)(1) of this section did not provide for the claim of invasion of privacy to survive the death of the decedent. Cannady v. St. Vincent Infirmary Med. Ctr., 2012 Ark. 369, — S.W.3d — (2012).

Evidence.

Circuit court erred in granting the directed-verdict motion of the church, insurer, and others, on the estate's claim for loss-of-life damages under subsection (b) of this section because there was substantial evidence from which a jury could have determined that the estate was entitled to loss-of-life damages. The testimony indicated that the decedent was a mother of four, as well as a grandmother; that she was close to her oldest daughter; that she had worked as a waitress; that she lived with a man for whom she had come to Arkansas; and that, at the time of the accident, the decedent was on her way to a family get-together. One Nat'l Bank v. Pope, 372 Ark. 208, 272 S.W.3d 98 (2008).

An estate seeking loss-of-life damages pursuant to subsection (b) of this section must present some evidence that the decedent valued his or her life, from which a jury could infer and derive that value and on which it could base an award of damages. Mere proof of life and then death is insufficient; that being said, it is not suggested that the evidence required be limited to direct evidence, as circumstantial evidence may certainly be used as well. One Nat'l Bank v. Pope, 372 Ark. 208, 272 S.W.3d 98 (2008).

Medical Malpractice.

Because the doctor's failure to perform to the appropriate standard of care constituted medical malpractice and was a proximate cause of the death of the child, under the Arkansas Wrongful Death statute the child's parents were awarded damages sustained as a proximate result of his wrongful death; the parents were also entitled to damages under the Arkansas Survival Statute, § 16-62-101 et seq. McMullin v. United States, 515 F. Supp. 2d 914 (E.D. Ark. 2007).

Wrongful-death and survival action brought by the administratrix of the decedent's estate against the medical center was time-barred under § 16-114-203 as the order appointing the administratrix was not effective until it was filed almost two weeks after the complaint was filed; therefore, at the time the administratrix filed this cause of action against the medical center, she was not the administrator of the estate and did not have standing to pursue the claim against the medical center. As such, the complaint a nullity. Hubbard v. Nat'l Healthcare of Pocahontas, Inc., 371 Ark. 444, 267 S.W.3d 573 (2007).

Multiple Actions.

Circuit court's order dismissing a wrongful death claim made pursuant to § 16-62-102(a) and (b), which failed to dispose of a survival claim made pursuant to this section, left the Arkansas Supreme Court without jurisdiction to entertain an appeal of the case in the absence of a final

judgment. Myers v. McAdams, 366 Ark. 435, 236 S.W.3d 504 (2006).

Parties.

Plaintiff lacked standing to sue when she filed the original complaint because she had not yet been appointed the administrator of decedent's estate (her mother's estate) and because she was not the sole heir; however, upon being appointed administrator six days later, she was deemed to be a new party when she filed the timely amended complaint. Hackelton v. Malloy, 364 Ark. 469, 221 S.W.3d 353 (2006).

Summary judgment was properly awarded to a physician in a husband's wrongful-death/survival action because when the husband filed his original suit, no order had been entered appointing him as administrator, nor were all of the wife's heirs at law named as plaintiffs, as required by this section and § 16-62-102(b). Norton v. Luttrell, 99 Ark. App. 109, 257 S.W.3d 580 (2007).

In a claim brought against the suppliers of a pain pump, a dismissal was proper because a wife, as a patient's administratrix, did not seek substitution under Fed. R. Civ. P. 25 prior to a nonsuit of the case when it was pending in federal court. Therefore, the patient and his wife did not receive the benefit of § 16-56-126. Wilson v. Lincare, Inc., 103 Ark. App. 329, 288 S.W.3d 708 (2008), review denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 723 (Apr. 2, 2009).

Cited: Johnson v. Greene Acres Nursing Home Ass'n, 364 Ark. 306, 219 S.W.3d 138 (2005); Miller v. Centerpoint Energy Res. Corp., 98 Ark. App. 102, 250 S.W.3d 574 (2007); Lucas v. Wilson, 2011 Ark. App. 584, 385 S.W.3d 891 (2011).

16-62-102. Wrongful death actions — Survival.

(a)(1) Whenever the death of a person or an unborn child as defined in § 5-1-102 is caused by a wrongful act, neglect, or default and the act, neglect, or default would have entitled the party injured to maintain an action and recover damages in respect thereof if death had not ensued, then and in every such case, the person or company or corporation that would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person or the unborn child as defined in § 5-1-102 injured, and although the death may have been caused under such circumstances as amount in law to a felony.

(2) The cause of action created in this subsection shall survive the death of the person wrongfully causing the death of another and may be brought, maintained, or revived against the personal representatives of the person wrongfully causing the death of another.

(3) A person is not liable under this subsection when the death of the unborn child results from:

(A) A legal abortion, including an abortion performed to remove an ectopic pregnancy or other nonviable pregnancy where the embryo is not going to develop further;

(B) The fault of the pregnant woman carrying the unborn child;

(C) Assisted reproduction technology activity, procedure, or treatment;

(D) Actions occurring before transfer to the uterus of the woman of an embryo created through in vitro fertilization; or

(E) A woman or her healthcare provider using contraception approved by the United States Food and Drug Administration.

(b) Every action shall be brought by and in the name of the personal representative of the deceased person. If there is no personal represen-

tative, then the action shall be brought by the heirs at law of the deceased person.

(c)(1) Every action authorized by this section shall be commenced within three (3) years after the death of the person alleged to have been wrongfully killed, except the action may be commenced against a person in the time period permitted to bring a murder charge under § 5-1-109(a) if the person was convicted of one (1) of the following offenses:

(A) Capital murder, § 5-10-101;

(B) Murder in the first degree, § 5-10-102; or

(C) Murder in the second degree, § 5-10-103.

(2) If a nonsuit is entered for an action authorized by this section, the action shall be brought within one (1) year from the date the nonsuit was entered without regard to the date of the death of the person alleged to have been wrongfully killed.

(d) The beneficiaries of the action created in this section are:

(1) The surviving spouse, children, father, mother, brothers, and sisters of the deceased person;

(2) Persons, regardless of age, standing in loco parentis to the deceased; and

(3) Persons, regardless of age, to whom the deceased stood in loco parentis at any time during the life of the deceased.

(e) No part of any recovery referred to in this section shall be subject to the debts of the deceased or become, in any way, a part of the assets of the estate of the deceased person.

(f)(1) The jury or the court, in cases tried without a jury, may fix such damages as will be fair and just compensation for pecuniary injuries, including a spouse's loss of the services and companionship of a deceased spouse and any mental anguish resulting from the death to the surviving spouse and beneficiaries of the deceased.

(2) When mental anguish is claimed as a measure of damages under this section, mental anguish will include grief normally associated with the loss of a loved one.

(g) The judge of the court in which the claim or cause of action for wrongful death is tried or is submitted for approval of a compromise settlement, by judgment or order and upon the evidence presented during trial or in connection with any submission for approval of a compromise settlement, shall fix the share of each beneficiary, and distribution shall be made accordingly. However, in any action for wrongful death submitted to a jury, the jury shall make the apportionment at the request of any beneficiary or party.

(h) Nothing in this section shall limit or affect the right of circuit courts having jurisdiction to approve or authorize settlement of claims or causes of action for wrongful death, but the circuit courts shall consider the best interests of all the beneficiaries under this section and not merely the best interest of the widow and next of kin as now provided by § 28-49-104.

(i) It is not the responsibility of the personal representative of a deceased person to locate anyone in loco parentis who is not known to

the personal representative to be in loco parentis to the deceased person.

History. Acts 1957, No. 255, §§ 1-5; 1981, No. 625, § 1; A.S.A. 1947, §§ 27-906 — 27-910; Acts 1993, No. 589, § 1; 2001, No. 1265, § 1; 2001, No. 1581, §§ 1, 2; 2013, No. 1032, § 2; 2013, No. 1426, § 1.

Amendments. The 2013 amendment by No. 1032 substituted "unborn child as defined in § 5-1-102" for "viable fetus" twice in (a)(1); and rewrote (a)(3).

The 2013 amendment by No. 1426 inserted "except the action ... the following offenses" in (c)(1); inserted (c)(1)(A) through (c)(1)(C); and, in (c)(2), substituted "entered for an action authorized by this section" for "suffered," deleted "of" following "from the date," and inserted "was entered."

RESEARCH REFERENCES

Ark. L. Rev. Note, The Measure of Life: Determining the Value of Lost Years After Durham v. Marberry, 59 Ark. L. Rev. 125.

CASE NOTES

Analysis

Applicability.
Complaint.
Medical Malpractice.
Parties.
Statute of Limitations.
Survival Action.

Applicability.

Rejection of the husband's claim that he had a curtesy interest in a settlement award involving his deceased wife was appropriate because the wife never possessed a chose in action since there was no cause of action for wrongful death created in any individual beneficiary under this section, the wrongful-death statute. Bridges v. Shields, 2011 Ark. 448, 385 S.W.3d 176 (2011), rehearing denied, — S.W.3d —, 2011 Ark. LEXIS 624 (Ark. Dec. 8, 2011).

Complaint.

Although plaintiff lacked standing to sue when she filed the original complaint because she had not yet been appointed the administrator of decedent's estate and she was not the sole heir, upon being appointed administrator six days later, she was deemed to be a new party when she filed the timely amended complaint; the original complaint remained a document setting out allegations satisfying the fact-pleading requirements for a complaint set out in Ark. R. Civ. P. 8(a) and the facts pled in the original complaint were adopted by reference under Ark. R. Civ. P. 10(c) into the amended complaint. Hackelton v. Malloy, 364 Ark. 469, 221 S.W.3d 353 (2006).

District court did not abuse its discretion in denying a motion to amend the complaint filed by plaintiff, the decedent's daughter, pursuant to Fed. R. Civ. P. 15(a), in a wrongful death action where the daughter, who at the time she filed the original complaint was not yet the personal representative of the estate and the heirs were not named as parties in the complaint, lacked standing to sue; the complaint amounted to a nullity and could not serve as the foundation for an amendment.Williams v. Bradshaw, 459 F.3d 846 (8th Cir. 2006).

Medical Malpractice.

Wrongful-death and survival action brought by the administratrix of the decedent's estate against the medical center was time-barred under § 16-114-203 as the order appointing the administratrix was not effective until it was filed almost two weeks after the complaint was filed; therefore, at the time the administratrix filed this cause of action against the medical center, she was not the administrator of the estate and did not have standing to pursue the claim against the medical center. As such, the complaint a nullity. Hubbard v. Nat'l Healthcare of Pocahontas, Inc., 371 Ark. 444, 267 S.W.3d 573 (2007).

Parties.

Circuit court properly concluded that the next of kin's wrongful death complaint against the physicians and nurses did not comply with § 16-62-102 (Supp. 1999) where there was no personal representative and the decedent's three siblings had not been named as plaintiffs in the action. Rice v. Tanner, 363 Ark. 79, 210 S.W.3d 860 (2005).

Order granting judgment on the pleadings in favor of a city, county, and others in a 42 U.S.C.S. § 1983 wrongful death action was affirmed as, when the original complaint was filed, the plaintiff, the decedent's daughter, was not yet the administratrix of the estate and the caption did not list the heirs individually, as required by Fed. R. Civ. P. 10(a) and Ark. R. Civ. P. 10(a); the complaint did not identify the heirs as parties and did not meet the requirements of subsection (b) of this section, thus, the daughter lacked standing to sue.Williams v. Bradshaw, 459 F.3d 846 (8th Cir. 2006).

Wrongful death and survival action filed by decedent's mother on behalf of herself and decedent was neither brought by and in the name of an appointed personal representative of decedent nor were decedent's brother and biological father (both statutory beneficiaries under subsection (d) of this section), joined as plaintiffs as required for a wrongful death action under subsection (b) of this section. Further, neither the mother nor anyone else had been appointed an administrator or executor as required for a survival action under § 16-62-101; therefore, at the time the mother filed the action, she did not have standing to pursue the claims against defendants. Farrow v. Sammis, — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 90429 (E.D. Ark. Dec. 7, 2007).

Regarding a father's motion to intervene in a mother's wrongful death and survivor action for the sole purpose of seeking to stay the proceedings pending a determination from the probate court as to who would be named administrator of decedent son's estate, Ark. R. Civ. P. 17 had no application because the action was not filed in accordance with subsection (b) of this section or § 16-62-101 and the original complaint thus was a nullity. When the original complaint was a nullity, Ark. R. Civ. P. 17 was inapplicable because the original complaint never existed and, therefore, there was no pleading to amend. Farrow v. Sammis, — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 90429 (E.D. Ark. Dec. 7, 2007).

Dismissal of a wrongful-death action against a doctor and a hospital was proper because the savings statute under § 16-62-102(b) did not apply since the case was improperly refiled by a mother and father as heirs at law when a personal representative had been appointed; the personal representative should have been substituted as the real party in interest prior to dismissal. Recinos v. Zelk, 369 Ark. 7, 250 S.W.3d 221 (2007).

Summary judgment was properly awarded to a physician in a husband's wrongful-death/survival action because when the husband filed his original suit, no order had been entered appointing him as administrator, nor were all of the wife's heirs at law named as plaintiffs, as required by § 16-62-101 and subsection (b) of this section. Norton v. Luttrell, 99 Ark. App. 109, 257 S.W.3d 580 (2007).

Trial court did not err by granting the doctors' summary judgment because the medical malpractice action was not properly filed within the two-year statute of limitations of § 16-114-203(a). The trial court did not err in holding that the November 3, 2009 order of substitution of parties was ineffective and therefore the action was barred by the statute of limitations because: (1) the wrongful death complaint filed by the patient's daughter and husband in April 2009 was a nullity because four siblings of the patient were omitted as party plaintiffs as required by subsection (b) of this section and therefore it never existed; (2) the order of substitution of parties that substituted the daughter in her capacity of estate administrator as the party plaintiff did not allege any facts supporting the action and therefore did not constitute an amended complaint; (3) the order of substitution was entered on November 3, 2009, after the statute of limitations had expired as to each doctor in July 2009 and September 2009; and (4) the estate administrator could not establish the first element of the continuous-course-of-treatment doctrine because she could not establish that the doctors provided continuous treatment to the patient up to November 3, 2009. Mendez v. Glover, 2010 Ark. App. 808, 379 S.W.3d 92 (2010).

Statute of Limitations.

Motion to dismiss filed by an energy company should not have been granted because a claim was not time barred under § 16-62-102(c)(1) where it was filed within three years of death, but not within three years of an accident; there was no negligence claim filed by a decedent or on his behalf prior to the filing of a wrongful-death action. Miller v. Centerpoint Energy Res. Corp., 98 Ark. App. 102, 250 S.W.3d 574 (2007).

Under the savings statute, subdivision (c)(2) of this section, the administratrix had one year from the date of the nonsuit to refile her complaint against the medical center, and the administratrix did this by refiling her complaint on November 17, 2005; therefore, the circuit court erred in dismissing the administratrix's complaint against it. Brown v. Nat'l Health Care of Pocahontas, Inc., 102 Ark. App. 148, 283 S.W.3d 224 (2008).

Filing of a workers' compensation claim did not toll the statute of limitations on a wrongful death suit; the Arkansas Workers' Compensation Commission's primary jurisdiction to determine workers' compensation coverage did not prevent the tort action from being filed while the workers' compensation claim was pending. Frisby v. Milbank Mfg. Co., 688 F.3d 540 (8th Cir. 2012).

Survival Action.

Circuit court's order dismissing a wrongful death claim which failed to dispose of a survival claim made pursuant to § 16-62-101 left the Arkansas Supreme Court without jurisdiction to entertain an appeal of the case in the absence of a final judgment. Myers v. McAdams, 366 Ark. 435, 236 S.W.3d 504 (2006).

Order appointing the administratrix on April 11, 2003, as special administratrix specifically stated that the term was for six months; thus, her term expired on October 11, 2003, before she filed complaints against all of the appellees except for the medical center; unless a person was the personal representative or executor of the estate at the time of filing, he had no standing to file a complaint on behalf of the estate and any complaint filed was a nullity, and because the administratrix's complaint was a nullity, her nonsuit on December 6, 2004, did not dismiss these complaints; it dismissed only the properly filed complaint against the medical center, and because the first complaints filed were nullities, the November 17, 2005 complaint was the first complaint filed by a properly appointed personal representative and no savings statute applied; thus, the administratrix's complaint against the medical personnel was barred by the statute of limitations. Brown v. Nat'l Health Care of Pocahontas, Inc., 102 Ark. App. 148, 283 S.W.3d 224 (2008).

Cited: Johnson v. Greene Acres Nursing Home Ass'n, 364 Ark. 306, 219 S.W.3d 138 (2005); Lucas v. Wilson, 2011 Ark. App. 584, 385 S.W.3d 891 (2011).

16-62-104 — 16-62-106. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as "SECTION 2".

Publisher's Notes. These sections, concerning death of a party or expiration of powers, were repealed by Acts 2013, No. 1148, §§ 32[33]–35[36]. The sections were derived from:

16-62-104. Civil Code, §§ 549, 550; C. & M. Dig., §§ 1053, 1054; Pope's Dig., §§ 1256, 1257; A.S.A. 1947, §§ 27-1001, 27-1002.

16-62-105. Civil Code, §§ 551-556; C. & M. Dig., §§ 1055-1060; Pope's Dig., §§ 1258-1263; A.S.A. 1947, §§ 27-1003 — 27-1008.

16-62-106. Acts 1851, §§ 1, 2, 4, p. 102; C. & M. Dig., §§ 1050-1052; Pope's Dig., §§ 1252, 1254, 1255; A.S.A. 1947, §§ 27-1009 — 27-1011.

16-62-108. Revivor of actions against plaintiff's representative or successor — Exception.

CASE NOTES

Timeliness.

Where after death of plaintiff, suit in state court was not revived within the period prescribed by this section and state court action was dismissed, administrator of deceased plaintiff could not thereafter bring the same action in federal court. Robison v. Jones, 261 F.2d 584 (8th Cir. Ark. 1958).

One-year statute of limitations in this section was applicable to bar a suit brought by a special administrator of an estate when the administrator died during the litigation. Ark. R. Civ. P. 25 merely governed the procedure for substituting a party and did not operate to enlarge the time in which substitution could occur. Ausman v. Hiram Shaddox Geriatric Ctr., 2013 Ark. 66, — S.W.3d — (2013).

Cited: Wilson v. Lincare, Inc., 103 Ark. App. 329, 288 S.W.3d 708 (2008).

16-62-109. Time for revivor — Effect of expiration.

CASE NOTES

Analysis

Applicability.
Dismissal.

Applicability.

Where the guardian of the wife's estate failed to timely obtain letters of administration within forty days of the wife's death, the guardian lost its authority to prosecute an action to contest her husband's will on her behalf when it failed to comply with § 28-65-323. The circuit court erred by deciding the case based on a failure to comply with § 16-62-109, which concerned time for revivor of a civil action and was inapplicable in this special proceeding. First Sec. Bank v. Estate of Leonard, 369 Ark. 213, 253 S.W.3d 434 (2007).

Dismissal.

Circuit court erred in striking and dismissing son's complaint as the circuit court order appointing son as special administrator for his deceased mother and ordering substitution of the parties pursuant to Ark. R. Civ. P. 25 was sufficient to revive the mother's breach of contract and negligence action against the nursing home; the procedures in the reviver statute, §§ 16-62-101 to 16-62-111, were superseded by the Rules of Civil Procedure in 1986 and no longer governed the procedure for obtaining an order of reviver and, thus, an order pursuant to the revivor statutes was unnecessary. Deaver v. Faucon Props., Inc., 367 Ark. 288, 239 S.W.3d 525 (2006).

One-year statute of limitations in § 16-62-108 was applicable to bar a suit brought by a special administrator of an estate when the administrator died during the litigation. Ark. R. Civ. P. 25 merely governed the procedure for substituting a party and did not operate to enlarge the time in which substitution could occur. Language in this section regarding a special administrator's powers ceasing for a period so long that the action cannot be revived further reinforced that the time limitation in § 16-62-108 applied, regardless of whether it was the injured party who died or a special administrator. Ausman v. Hiram Shaddox Geriatric Ctr., 2013 Ark. 66, — S.W.3d — (2013).

CHAPTER 63

PLEADINGS AND PRETRIAL PROCEEDINGS

SUBCHAPTER.
2. Pleadings.

SUBCHAPTER 2 — PLEADINGS

Effective Dates. Acts 2011, No. 336, § 2: Mar. 18, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that complaints are often misconstrued with respect to the amount in controversy; that a plaintiff should be allowed to state with specificity the actual amount sought; that when a plaintiff pleads with particularity the amount in controversy the plaintiff should be bound by that pleading; and that this act is immediately necessary because the rules regarding pleading civil complaints should be implemented without undue delay due to current strain on judicial dockets. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

16-63-201, 16-63-202. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as "SECTION 2".

Publisher's Notes. These sections, concerning pleadings, were repealed by Acts 2013, No. 1148, § § 35[36], 36[37]. The sections were derived from:

16-63-201. Civil Code, § 105; C. & M. Dig., § 1183; Pope's Dig., § 1405; A.S.A. 1947, § 27-1101.

16-63-202. Acts 1915, No. 290, § 18; C. & M. Dig., § 1186; Pope's Dig., § 1408; A.S.A. 1947, § 27-1104.

16-63-204, 16-63-205. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as "SECTION 2".

Publisher's Notes. These sections, concerning answer by guardian of infant or insane person or by attorney for prisoner and counterclaim, were repealed by Acts 2013, No. 1148, §§ 37[38], 38[39]. The sections were derived from:

16-63-204. Civil Code, § 122; C. & M. Dig., § 1203; Pope's Dig., § 1425; A.S.A. 1947, § 27-1122

16-63-205. Civil Code, § 118; C. & M. Dig., § 1196; Pope's Dig., § 1418; A.S.A. 1947, § 27-1124

16-63-207. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as "SECTION 2".

Publisher's Notes. This section, concerning libel and slander, was repealed by Acts 2013, No. 1148, § 39[40]. The section was derived from Civil Code, §§ 143, 144; C. & M. Dig., §§ 1228, 1229; Pope's Dig., §§ 1452, 1453; A.S.A. 1947, §§ 27-1148, 27-1149.

16-63-209, 16-63-210. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as "SECTION 2".

Publisher's Notes. These sections, concerning instrument for payment of money only and actions for recovery of real property, were repealed by Acts 2013, No. 1148, §§ 40[41], 41[42]. The sections were derived from:

16-63-209. Civil Code, § 138; Acts 1871, No. 48, § 1 [138], p. 219; C. & M. Dig., § 1222; Pope's Dig., § 1446; A.S.A. 1947, § 27-1143.

16-63-210. Civil Code, § 145; C. & M. Dig., § 1230; Pope's Dig., § 1454; A.S.A. 1947, § 27-1145.

16-63-212 — 16-63-214. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as "SECTION 2".

Publisher's Notes. These sections, concerning presumptions and matters of judicial notice, irrelevant or redundant matter, and variance between pleading and proof, were repealed by Acts 2013, No. 1148, §§ 42[43] — 44[45]. The sections were derived from:

16-63-212. Civil Code, § 137; C. & M. Dig., § 1221; Pope's Dig., § 1445; A.S.A. 1947, § 27-1141.

16-63-213. Civil Code, § 140; C. & M. Dig., § 1225; Pope's Dig., § 1449; A.S.A. 1947, § 27-1154.

16-63-214. Civil Code, §§ 150-152; C. & M. Dig., §§ 1234-1236; Pope's Dig., §§ 1458-1460; A.S.A. 1947, §§ 27-1155 — 27-1157.

16-63-216, 16-63-217. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as "SECTION 2".

Publisher's Notes. These sections, concerning constructive service and deposition, were repealed by Acts 2013, No. 1148, §§ 45[46], 46[47]. The sections were derived from:

16-63-216. Civil Code, § 444; C. & M. Dig., § 6260; Pope's Dig., § 8216; A.S.A. 1947, § 27-1153.

16-63-217. Acts 1915, No. 290, § 18; C. & M. Dig., § 1186; Pope's Dig., § 1408; A.S.A. 1947, § 27-1104.

16-63-221. Complaint — Amount in controversy.

(a) A plaintiff who files a complaint in a circuit or district court praying for an award of damages may, but is not required to, state an amount in controversy for the purposes of establishing subject-matter jurisdiction and determining if the amount sought is within the jurisdictional limits of the court.

(b) A declaration allowed by subsection (a) of this section is binding on the plaintiff with respect to the amount in controversy unless the plaintiff subsequently amends the complaint to pray for damages in an

amount that exceeds the jurisdictional limits of the court, at which time the amendment is governed by the Arkansas Rules of Civil Procedure.

History. Acts 2011, No. 336, § 1.

Subchapter 3 — Joinder

SECTION.
16-63-301. [Repealed.]

16-63-301. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as "SECTION 2".

Publisher's Notes. This section, concerning misjoinder, was repealed by Acts 2013, No. 1148, § 47[48]. The section was derived from Civil Code, §§ 103, 104; C. & M. Dig. §§ 1078, 1079; Pope's Dig., §§ 1286, 1287; A.S.A. 1947, §§ 27-1302, 27-1303.

Subchapter 4 — Continuance or Dismissal

SECTION.
16-63-401. [Repealed.]
16-63-407. [Repealed.]

16-63-401. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as "SECTION 2".

Publisher's Notes. This section, concerning continuance after amendment, was repealed by Acts 2013, No. 1148, § 48[49]. The section was derived from Civil Code, § 157; C. & M. Dig., § 1244; Pope's Dig., § 1468; A.S.A. 1947, § 27-1402.

16-63-402. Continuance for absence of evidence or witness.

CASE NOTES

Analysis

Evidence.
Reviewability.

Evidence.

Because the jury had before it ample evidence that the victim previously made claims of sexual abuse that no one believed, defendant was not prejudiced during his trial for sexual assault by the trial court's denial of his motion for a continuance, pursuant to subsection (a) of this section, to provide an investigator who could testify as to the victim's inconsistencies and untruths. Brown v. State, 374 Ark. 341, 288 S.W.3d 226 (2008).

Reviewability.

Revocation of defendant's suspended imposition of sentence was appropriate because he never argued to the trial court that the state had not filed an affidavit in accordance with subsection (a) of this section. In the absence of an objection at trial, any argument concerning the failure to submit such an affidavit would not be addressed on appeal. Dotson v. State, 2011 Ark. App. 731, — S.W.3d — (2011).

16-63-407. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as "SECTION 2".

Publisher's Notes. This section, concerning striking causes of action, was repealed by Acts 2013, No. 1148, § 49[50]. The section was derived from Civil Code, § 102; C. & M. Dig., § 1077; Pope's Dig., § 1285; A.S.A. 1947, § 27-1408.

Subchapter 5 — Citizen Participation in Government Act

16-63-501. Title.

RESEARCH REFERENCES

ALR. Application of Anti-SLAPP ("Strategic Lawsuit Against Public Participation") Statutes to Real Estate Development, Land Use, and Zoning Disputes. 64 A.L.R.6th 365.

16-63-502. Legislative findings.

RESEARCH REFERENCES

Ark. L. Rev. Have I Been SLAPPed? Arkansas's Attempt to Curb Abusive Litigation: The Citizen Participation in Government Act, 60 Ark. L. Rev. 507.

16-63-504. Immunity from suit.

RESEARCH REFERENCES

ALR. Application of Anti-SLAPP ("Strategic Lawsuit Against Public Participation") Statutes to Real Estate Development, Land Use, and Zoning Disputes. 64 A.L.R.6th 365.

CHAPTER 64

TRIAL AND VERDICT

SECTION.
16-64-101 — 16-64-104. [Repealed.]
16-64-111, 16-64-112. [Repealed.]

16-64-101 — 16-64-104. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as "SECTION 2".

Publisher's Notes. These sections, concerning issues related to trial by court or jury, were repealed by Acts 2013, No. 1148, §§ 50[51] — 53[54]. The sections were derived from:

16-64-101. Civil Code, § 336; C. & M. Dig., § 1263; Pope's Dig., § 1487; A.S.A. 1947, § 27-1701.

16-64-102. Civil Code, §§ 334, 335; Acts 1871, No. 48, § 1 [334, 335], p. 219; C. & M. Dig., §§ 1264, 1265; Pope's Dig., §§ 1488, 1489; A.S.A. 1947, §§ 27-1702, 27-1703.

16-64-103. Civil Code, § 337; C. & M. Dig., § 1266; Pope's Dig., § 1490; A.S.A. 1947, § 27-1704.

16-64-104. Civil Code, § 377; C. & M. Dig., § 1310; Pope's Dig., § 1535; A.S.A. 1947, § 27-1745.

16-64-111, 16-64-112. [Repealed.]

Publisher's Notes. These sections, concerning interpreters for persons with communication problems and for the deaf, were repealed by Acts 2013, No. 237, §§ 3, 4. The sections were derived from:

16-64-111. Acts 1973, No. 555, § 2; A.S.A. 1947, § 27-835; Acts 2001, No. 424, § 2.

16-64-112. Acts 1979, No. 664, §§ 1, 2; A.S.A. 1947, §§ 5-715.1, 5-715.2; Acts 1991, No. 469, § 1.

16-64-114. Jury instructions generally.

CASE NOTES

Formal Deliberations.

Formal deliberations have begun where a jury has received its instructions and heard the arguments of counsel before retiring to the jury room. D.B.&J. Holden Farms, Ltd. P'ship v. Ark. State Highway Comm'n, 93 Ark. App. 202, 218 S.W.3d 355 (2005).

16-64-115. Jury instructions — Further instruction during deliberations.

CASE NOTES

Analysis

Deposition Testimony.
No Violation Found.

Deposition Testimony.

In a medical malpractice action, a trial court did not err in allowing videotape deposition testimony by plaintiff's treating physician to be replayed to the jury because no transcript of the deposition was available and the trial court complied with the requirements of this section by replaying the physician's entire testimony, including both direct and cross-examination, in open court with all parties present. Padilla v. Archer, 2011 Ark. App. 746, 387 S.W.3d 267 (2011), rehearing denied, — S.W.3d —, 2012 Ark. App. LEXIS 33 (Ark. Ct. App. Jan. 11, 2012).

No Violation Found.

Trial court did not err in denying an administratrix's motion for a new trial after a jury awarded judgment to a home health care company and its employees in an action for negligence because a bailiff did not violate the statute by answering a jury question; the bailiff's stated in an affidavit that after the bailiff informed the attorneys that the jury had a question, the jurors told the bailiff they had figured it out. Houchins v. Home Care Professionals of Ark., Inc., 2012 Ark. App. 553, — S.W.3d — (2012).

16-64-116. Conduct of jury after submission of case.

CASE NOTES

No Violation Found.

Trial court did not err in denying an administratrix's motion for a new trial after a jury awarded judgment to a home health care company and its employees in an action for negligence because a bailiff did not violate the statute by answering a jury question; the bailiff's stated in an affidavit that after the bailiff informed the attorneys that the jury had a question, the jurors told the bailiff they had figured it out. Houchins v. Home Care Professionals of Ark., Inc., 2012 Ark. App. 553, — S.W.3d — (2012).

16-64-119. Verdict of jury — Polling jury.

CASE NOTES

Applicability.

This section pertains to civil trials and was inapplicable in this criminal case. Adams v. State, 2009 Ark. 375, 326 S.W.3d 764 (2009), rehearing denied, Adams v. State, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 556 (Sept. 10, 2009), cert. denied, Adams v. Arkansas, 559 U.S. 1021, 130 S. Ct. 1922, 176 L. Ed. 2d 392 (2010).

16-64-122. Comparative fault.

CASE NOTES

Analysis

Construction.
Applicability.
Apportionment of Fault.
Jury.
Jury Instructions.
Pleading.

Construction.

Civil Justice Reform Act (CJRA), § 16-55-201 et seq., pertains to fault apportionment in a general way, and the Arkansas Comparative Fault Act under this section specifically defines fault and identifies whose fault can be apportioned. Because these two provisions address the same subject matter, it is reasonable to conclude that the general terms of the CJRA are intended to be subject to the specific terms of the Arkansas Comparative Fault Act. Billings v. Aeropres Corp., 522 F. Supp. 2d 1121 (E.D. Ark. 2007).

Applicability.

Trial court should not have instructed the jury on comparative fault under this section in appellant's action for damages resulting from a car accident because appellee was required to yield the right of way under § 27-51-603 and appellant did not have a duty to anticipate his failure to yield. The fact that appellant allegedly admitted fault by stating that she was looking for a parking spot was irrelevant as she had no duty; rather it was appellee's duty to avoid the accident resulting from appellant hit appellee's car as he was backing out of a driveway onto the highway on which appellant was traveling. Bell v. Misenheimer, 102 Ark. App. 389, 285 S.W.3d 693 (2008), rev'd, 2009 Ark. 222, 308 S.W.3d 120 (2009).

Apportionment of Fault.

Appellate court reversed a judgment that awarded no damages to a building owner even though the jury found that the owner was not liable and that a fire extinguisher company and plaintiff restaurant were each fifty percent (50%) liable for damages caused by the fire as, under this section, the owner's liability was to be compared to the company's liability. Yu v. Metro. Fire Extinguisher Co., 94 Ark. App. 317, 230 S.W.3d 299 (2006).

Section 16-55-202 should be interpreted as being compatible with subsection (a) of this section, which limits the apportionment of fault to an individual or entity from whom the claiming party seeks to recover damages, which includes individuals and entities that are subject to being brought into a suit pursuant to a cross or third party claim under Ark. R. Civ. P. 13, 14, but excludes nonparties who are otherwise immune from suit, including employers who are immune pursuant to § 11-9-105(a), the exclusive remedies provision of the Workers' Compensation Act, § 11-9-101 et seq. Billings v. Aeropres Corp., 522 F. Supp. 2d 1121 (E.D. Ark. 2007).

Jury.

Circuit court's error in resubmitting a negligence case on special interrogatory verdict forms without allowing the individual the opportunity to argue to the jury the effects of the answers to the interrogatories pursuant to § 16-64-122(d) was not harmless error where the jury apportioned each party fifty percent (50%) fault, even the slightest tipping of those percentages in favor of the individual would have resulted in a judgment against the owner of the electrical wire, the jury had

been deadlocked at one point, six to six, only the minimum number of jurors needed for a verdict were in agreement, and the error was particularly injurious because the individual could not have known at closing arguments that special interrogatory forms would be used. Campbell v. Entergy Arkansas, Inc., 363 Ark. 132, 211 S.W.3d 500 (2005).

Jury Instructions.

Trial court properly instructed the jury on comparative fault as the broad language set forth in this section contradicted plaintiff's claim that fault should not be compared in enhanced-injury cases; under Arkansas law, comparative fault was applicable to all actions for personal injury or wrongful death. Bishop v. Tariq, Inc., 2011 Ark. App. 445, 384 S.W.3d 659 (2011), rehearing denied, — S.W.3d —, 2011 Ark. App. LEXIS 519 (Ark. Ct. App. July 27, 2011).

Pleading.

As a consequence of failing to plead contributory negligence as an affirmative defense, defendant retailer did not have available the full benefit of a contributory negligence defense under subsection (b) of this section, but the failure did not make all evidence relating to plaintiff's conduct excludable under Fed. R. Evid. 401 and 403. Dupont v. Fred's Stores of Tenn., Inc., 652 F.3d 878 (8th Cir. 2011).

CHAPTER 65

JUDGMENTS GENERALLY

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

SECTION.

16-65-103. Computation of amount of judgment.

CASE NOTES

Multiple Parties.

Judgment in a vehicle rollover case was not final as required by Ark. R. App. P. Civ. 2(a)(1), because it merely set forth the jury's findings that both the vehicle manufacturer and the other driver were responsible and the total amount of damages, rather than a specific dollar amount owed by the manufacturer pursuant to this section. Ford Motor Co. v. Washington, 2013 Ark. 88, — S.W.3d — (2013).

Cited: McWhorter v. McWhorter, 2009 Ark. 458, 344 S.W.3d 64 (2009).

16-65-113. Entry into judgment book — Index.

(a) The clerk must keep among the records of the court a book to be called the judgment book.

(b) The entry in the judgment book must show the names of the plaintiff and defendant and, if more than one (1), then of the first-named of each in the pleadings with the words "and others", the term at which the judgment was entered, and a reference to the order book and page at which the judgment is to be found, with a space left for the entry of the satisfaction of the judgment.

(c)(1) The clerk shall immediately after the rendition of any judgment or decree enter it in the judgment book, in which shall be alphabetically cross-indexed all the judgments of the court, according to the surnames of the plaintiff and defendant. If there is more than one (1) plaintiff or defendant, then the names of all plaintiffs and defendants shall be so indexed and cross-indexed.

(2) It shall be so arranged that all the judgments in the case of plaintiffs whose surnames commence with the same letter and all of each term shall immediately succeed each other.

(d) If a clerk scans judgments so that they appear in full on an Internet-based system or other similar electronic system and are searchable by name and case number, the requirements of this subchapter no longer apply.

History. Rev. Stat., ch. 84, § 31; Civil Code, § 424; Acts 1909, No. 17, § 1, p. 26; C. & M. Dig., § 6282; Pope's Dig., § 8238; A.S.A. 1947, §§ 29-118, 29-120, 29-121; Acts 2009, No. 1209, § 1.

Amendments. The 2009 amendment added (d).

16-65-114. Interest on judgments.

(a)(1) Except as provided in subdivision (a)(2) of this section, interest on a judgment entered by a court shall bear interest:

(A) In an action on a contract at the rate provided by the contract or ten percent (10%) per annum, whichever is greater; and

(B) In any other action at ten percent (10%) per annum.

(2) Interest on a judgment shall not exceed the maximum rate permitted under Arkansas Constitution, Amendment 89.

(b) A judgment rendered or to be rendered against a county in the state on a county warrant or other evidence of county indebtedness shall not bear interest.

History. Acts 1868, No. 9, § 2, p. 32; 1893, No. 78, § 1, p. 145; C. & M. Dig., § 7360; Pope's Dig., § 9399; Acts 1975, No. 474, § 1; 1985, No. 782, § 1; A.S.A. 1947, § 29-124; Acts 2009, No. 633, § 15; 2013, No. 1140, § 1.

Amendments. The 2009 amendment substituted "a circuit court" for "any court or magistrate" in (a); inserted (b) and redesignated the subsequent subsection accordingly; and made minor stylistic changes.

The 2013 amendment rewrote and redesignated former (a) as present (a)(1); inserted (a)(2); deleted (b) and redesignated former (c) as present (b); and in present (b), substituted "a county warrant" for "county warrants," and deleted "any" and "after the passage of this act" at the end.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Annual Survey of Caselaw: Tort Law, 27 U. Ark. Little Rock L. Rev. 759.

CASE NOTES

In General.

In a home sale breach of contract action, reversal and remand for a damages trial mooted the issue as to whether the sellers were entitled to postjudgment interest pursuant to subsection (a) of this section. Heflin v. Brackelsberg, 2010 Ark. App. 261, 374 S.W.3d 755 (2010).

Cited: DC Xpress, L.L.C. v. Briggs, 2009 Ark. App. 651, 343 S.W.3d 603 (2009).

16-65-117. Judgment as lien on land.

(a)(1)(A) A judgment in the Supreme Court or circuit courts of this state, and in the United States district courts or United States bankruptcy courts within this state, shall be a lien on the real estate owned by the defendant in the county in which the judgment was rendered from the date of its rendition only if the clerk of the court which rendered the judgment maintains a permanent office within the county, at which office permanent records of the judgments of the court are continuously kept and maintained, and the judgment has been filed with the circuit clerk. A judgment in the district courts of this state shall not be a lien on the real estate owned by the defendant in the county in which the judgment was rendered until the judgment has been filed and indexed in the judgment records of the circuit clerk in the county in which the judgment was rendered.

(B) As to any person who does not have actual notice of the rendition of the judgment, the judgment shall be a lien from the date the judgment is recorded and indexed by the court clerk in a manner that provides reasonable notice to the public.

(2)(A) If a judgment is rendered by one (1) of the courts in a county where the clerk of the court does not maintain a permanent office at which permanent records of the judgments of the court are continuously kept and maintained, the judgment shall not be a lien on the land of the defendant in that county until a certified copy of the judgment is filed in the office of the circuit clerk of that county.

(B) As to any person who does not have actual notice of the rendition of the judgment, the judgment shall be a lien from the date the judgment is recorded and indexed by the court clerk in a manner that provides reasonable notice to the public.

(b)(1) No such judgment shall be a lien on the land of the defendant in any other county until a certified copy of the judgment is filed in the office of the clerk of the circuit court of the county in which the land lies.

(2) As to any person who does not have actual notice of the rendition of the judgment, the judgment shall be a lien from the date the judgment is recorded and indexed by the court clerk in a manner that provides reasonable notice to the public.

(c)(1) The clerk, on the filing in his office of a certified copy of a judgment of any of the courts mentioned in subsection (a) of this section, and upon the payment of three dollars ($3.00), shall immediately proceed to docket and index the judgment in the same manner as

though rendered in the court of his or her own county. From that time, the judgment shall be a lien on the defendant's lands in that county.

(2) It shall be the duty of the court clerk to index each judgment immediately upon filing it in the permanent records of the judgments of the court. For purposes of this section, the term "judgments" shall include any order, decree, or judgment which contains a provision for payment of money for the support and care of any child or children through the registry of the court.

(d)(1) The liens authorized by this section shall continue in force for ten (10) years from the date of the judgment and may be revived under § 16-65-501.

(2) Except as provided in § 16-65-501, a transcript of the judgment of revivor, when filed in other counties, shall have the same and like effect as a judgment of revivor has in the county in which it is rendered.

History. Acts 1891, No. 56, §§ 1, 2, p. 92; C. & M. Dig., §§ 6299, 6300; Pope's Dig., §§ 8255, 8256; Acts 1945, No. 55, § 2; 1959, No. 182, § 1; 1963, No. 124, § 1; 1977, No. 333, § 3; 1985, No. 228, § 1; A.S.A. 1947, §§ 12-1720, 29-130, 29-131; Acts 1987, No. 356, § 1; 1989, No. 931, § 1; 1993, No. 1179, § 1; 1995, No. 475, § 1; 2011, No. 227, § 2.

Amendments. The 2011 amendment subdivided (d); inserted "under § 16-65-501" in (d)(1); and inserted "Except as provided in § 16-65-501" in (d)(2).

RESEARCH REFERENCES

Ark. L. Notes. Laurence and Circo, An Exchange of Collegial Memoranda on the Attachment of a Judgment Lien to Real Property Subject to a Buy-Sell Agreement, 2006 Arkansas L. Notes 93.

CASE NOTES

Analysis

Homestead.
Judgments.

Homestead.

Through 11 U.S.C.S. § 544(a)(1), the bankruptcy provided Chapter 12 debtors in possession with judgment lien rights under subdivision (a)(1) of this section, but the property was subject to an Ark. Const. Art. 9, § 3, homestead to which such a lien could not attach, thus, avoidance of creditor bank's mortgage was not available under § 544(a)(1). Caine v. First State Bank (In re Caine), 462 B.R. 688 (Bankr. W.D. Ark. 2011).

Judgments.

Judgment debtor, which obtained a judgment against a debtor in Texas, and recorded its judgment in the real property records of an Arkansas county, had an enforceable judgment lien against the debtor's real property in that county. United States v. Neal, — F. Supp. 2d —, 255 F.R.D. 638, 2008 U.S. Dist. LEXIS 107768 (W.D. Ark. Dec. 30, 2008), aff'd, — F.3d —, 2010 U.S. App. LEXIS 18553 (8th Cir. Ark. 2010).

Directed verdict was appropriate, because the judgment debtors did not own the property, and as a matter of law, the company's judgment lien did not attach to the property that was now owned by the current owner; there was no evidence that the judgment debtors owned the property. Buckeye Ret. Co., LLC v. Walter, 2012 Ark. App. 257, — S.W.3d — (2012).

16-65-121. Judgments, etc., effective from date rendered.

CASE NOTES

Construction.

Court did not err in finding that appellees timely revived the 1999 decree where they filed their writ of scire facias on May 13, 2009, within ten years from May 25, 1999, the effective date of the decree, because the Arkansas Supreme Court had previously found Ark. R. Civ. P. 58 effectively superseded this section, and there was no reason not to extend this finding, which involved this more generally applicable section, to § 16-65-501. Middleton v. Lockhart, 2012 Ark. 131, 388 S.W.3d 451 (2012).

Subchapter 5 — Survival and Revival

SECTION.

16-65-501. Scire facias.

(a) The plaintiff or his or her legal representatives at any time before the expiration of the lien of a judgment may sue out a scire facias to revive the judgment.

(b) The scire facias shall be served on the defendant or his or her legal representatives, terre-tenants, or other person occupying the land, and may be directed to and served in any county in this state.

(c)(1) If the defendant cannot be found, the court shall make an order briefly setting forth the nature of the case and requiring all persons interested to appear on a date set by the court and show cause why the judgment or decree should not be revived and lien continued.

(2) A copy of the order shall be put up for four (4) weeks at the courthouse door of the county in which the judgment or decree may have been rendered.

(d) If upon service or publication of the scire facias, as required in subsection (c) of this section, the defendant or any other person interested does not appear and show cause why such judgment or decree shall not be revived, the judgment shall be revived and the lien continued for another period of ten (10) years and so on from time to time as often as may be necessary.

(e) If a scire facias is sued out before the termination of the lien of any judgment or decree, the lien of the judgment revived shall have relation to the day on which the scire facias issued.

(f) No scire facias to revive a judgment shall be issued except within ten (10) years from the date of the rendition of the judgment, or if the judgment shall have been previously revived, then within ten (10) years from the order of revivor.

(g)(1) Unless before the expiration of a judgment the notice under subdivision (g)(2) of this section is recorded in the real property records of a county other than the county in which an action under this section is filed:

(A) A scire facias to revive the judgment is not effective in the county other than the county in which an action under this section is filed; and

(B)(i) A recorded judgment lien may not be revived against real property in the county other than the county in which an action under this section is filed.

(ii) This subdivision (g)(1)(B) does not prevent a judgment creditor from registering a judgment or recording a judgment lien in a new county after a judgment is obtained or revived.

(2) The notice shall include with respect to the action:

(A) The names of the judgment debtors and judgment creditors;

(B) The name of the court and case number in which the judgment was rendered;

(C) The name of the county in which the petition for a writ of scire facias was filed;

(D) The date on which the petition was filed; and

(E) A statement that the filing party intends to maintain its judgment lien against any property of the judgment debtor located in the county in which the notice is filed.

History. Rev. Stat., ch. 84, §§ 6-11; Acts 1891, No. 110, § 1, p. 192; C. & M. Dig., §§ 6316-6322; Pope's Dig., §§ 8271-8277; Acts 1983, No. 718, §§ 1, 2; 1985, No. 228, § 2; A.S.A. 1947, §§ 29-601—29-607; Acts 2011, No. 227, § 1.

Amendments. The 2011 amendment deleted the last sentence in (e); and added (g).

CASE NOTES

Revival.

Under this section, the dealership owner's writ of scire facias to revive a ten-year-old judgment against the partner should have been granted because the owner's 1993 judgment had not been satisfied; the partner had twice tendered the cash and stock certificates but, despite his efforts, he had been unable to extinguish his judgment debt. Carder Buick-Olds Co. v. Wooten, 2009 Ark. App. 310, 308 S.W.3d 156 (2009).

Court did not err in finding that appellees timely revived the 1999 decree where they filed their writ of scire facias on May 13, 2009, within ten years from May 25, 1999, the effective date of the decree, because the Arkansas Supreme Court had previously found Ark. R. Civ. P. 58 effectively superseded § 16-65-121, and there was no reason not to extend this finding, which involved the more generally applicable § 16-65-121, to this section. Middleton v. Lockhart, 2012 Ark. 131, 388 S.W.3d 451 (2012).

Court did not err in concluding that the 1999 decree could be revived by a writ of scire facias under this section, because the 1999 decree was entitled to the same footing as a judgment, and chancery courts had the statutory power to issue writs of execution to enforce their decrees. Middleton v. Lockhart, 2012 Ark. 131, 388 S.W.3d 451 (2012).

CHAPTER 66

EXECUTION OF JUDGMENTS

SUBCHAPTER.

SUBCHAPTER 1 — GENERAL PROVISIONS

16-66-101. Execution issued on final judgment order.

CASE NOTES

Cited: Tiner v. Tiner, 2012 Ark. App. 483, — S.W.3d — (2012).

16-66-118. Defaults of officers.

(a) Each officer to whom any execution is delivered shall be liable and bound to pay the whole amount of money specified in or endorsed on the execution and directed to be levied if he or she willfully:

(1) Neglects or refuses to execute or levy the execution according to law;

(2) Takes in execution any property, or if any property is delivered to him or her by any person against whom an execution may have been issued, and the officer neglects or refuses to make a sale of the property so delivered according to law;

(3) Does not return the execution on or before the return day specified therein;

(4) Makes a false return of the execution; or

(5) After having taken the defendant's body in execution, permits him or her to escape, and does not have his body according to the command of the writ.

(b) It shall be the duty of the clerk of the court from which any execution may be issued to endorse on the execution the time when it was returned.

(c) If the officer, on the return of any execution or at the time the execution ought to be returned, does not have the money which he or she may have become liable to pay as prescribed in subsection (a) of this section and does not pay the money over according to the command of the writ, any person aggrieved thereby may have his or her action against the officer and his or her securities, upon his or her official bond.

(d) If any officer sells any property under any execution, whether he or she received payment therefor or not, or makes the money specified in or endorsed on any execution and directed to be levied, or any part thereof, and does not have the amount of such sales or the money so made before the court and does not pay over the same according to law, he or she shall be liable to pay the whole amount of the sale or money by him or her made to the person entitled thereto, with lawful interest thereon, and damages in addition at the rate of ten percent (10%) per

month to be computed from the time when the execution is made returnable until the whole is paid, to be recovered in an action against the officer and his securities on his or her official bond.

(e)(1) The party aggrieved may proceed against the officer by the motion before the court in which the writ is returnable in a summary manner, ten (10) days' previous notice of the intended motion being given, on which motion the court shall render judgment for the amount which ought to have been paid, with interest and damages as provided in subsection (d) of this section, and award execution thereon.

(2) The proceeding against any officer by motion in the manner prescribed in subdivision (e)(1) of this section shall not be construed to exempt the securities of the officer from liability.

(f)(1) It shall be the duty of every officer to whom any execution may be directed, issued on any judgment recovered on motion according to the provisions of subsections (d) and (e) of this section, to execute the execution within fifteen (15) days after it shall be delivered to him or her.

(2) The officer shall be subject to the same penalties and liabilities for every default therein as on other executions.

(g) If any sheriff or other officer to whom any execution may be legally directed refuses to receive the execution and execute it according to law, the officer shall be deemed guilty of a misdemeanor in office and shall also be liable to the party aggrieved for the amount of money specified in the execution, to be recovered against him or her and his or her securities on his or her official bond.

History. Rev. Stat., ch. 60, §§ 62-67; C. & M. Dig., §§ 4360-4365; Pope's Dig., §§ 5372-5377; A.S.A. 1947, §§ 30-1001 — 30-1006; Acts 2013, No. 319, § 1.

Amendments. The 2013 amendment added "willfully" at the end of the introductory language of (a).

Subchapter 2 — Property Subject to Execution — Exemptions

RESEARCH REFERENCES

Ark. L. Notes. Laurence, Common-law Exemptions, 2005 Arkansas L. Notes 65.

16-66-209. Exemption — Proceeds of life, health, accident, and disability insurance.

(a) To the extent permitted by the Arkansas Constitution, all moneys paid or payable to any resident of this state under an insurance policy providing for the payment of life, sick, accident, or disability benefits

shall be exempt from liability or seizure under judicial process of any court and shall not be subjected to the payment of any debt by contract or otherwise by any writ, order, judgment, or decree of any court.

(b) As used in this section, "moneys" means a payment made under an insurance policy to compensate:

(1) The insured or beneficiary for a claim under the policy; or

(2) The owner, insured, or beneficiary for the cash surrender value of the policy.

(c) Nothing in this section shall be construed to affect the validity of any sale, assignment, mortgage, pledge, or hypothecation of a policy of insurance or the avails, proceeds, or benefits of a policy of insurance.

History. Acts 1933, No. 102, § 1; Pope's Dig., § 7988; A.S.A. 1947, § 30-208; Acts 2009, No. 469, § 1.

Amendments. The 2009 amendment inserted (b) and redesignated the remaining text accordingly; inserted "To the extent permitted by the Arkansas Constitution" in (a); and made related and minor stylistic changes.

16-66-210. Homestead Exemption Act.

CASE NOTES

Analysis

Construction.
Extent of Exemption.
Head of a Family.

Construction.

Defendant's testimony that he was entitled to Second Amendment protection for his possession of a machine gun and a sawed off shotgun was properly withheld from the jury, where he was only a member of an unregulated militia; whether he was entitled to court-appointed counsel depended upon the homestead exemption under this section. United States v. Fincher, 538 F.3d 868 (8th Cir. 2008), rehearing denied, — F.3d —, 2008 U.S. App. LEXIS 28303 (8th Cir. Ark. Sept. 25, 2008), cert. denied, — U.S. —, 129 S. Ct. 1369, 173 L. Ed. 2d 591 (2009).

Extent of Exemption.

Homestead exemption under subdivision (c)(1) of this section extended to only 80 of defendant's 120 acres of real property, and defendant and his wife could claim only a single homestead exemption. Defendant therefore had 40 acres of nonhomestead property that could have been sold to pay legal fees, and reimbursement was required for legal services provided under the Criminal Justice Act, 18 U.S.C.S. § 3006A. United States v. Fincher, 593 F.3d 702 (8th Cir. 2010).

Head of a Family.

Where an unmarried bankruptcy debtor lived with his non-dependent sibling, the debtor nonetheless qualified as head of household for purposes of a homestead exemption since his dependent parent lived with him prior to the parent's death and there was no showing that the homestead was terminated; it was irrelevant that the parent was only partially dependent upon debtor, that debtor might not have been legally obligated to support the parent, and that the parent died prior to debtor's bankruptcy. In re Morris, 340 B.R. 78 (Bankr. W.D. Ark. 2006).

Because each debtor was an Arkansas resident, was head of a household, and had claimed the appropriate acreage, debtors were, for the purposes of the opinion, entitled to claim their respective eighty acres as exempt under Arkansas law. In re White, 450 B.R. 866, 2011 Bankr. LEXIS 1573 (Bankr. E.D. Ark. Apr. 29, 2011).

16-66-211. Claiming exemptions — Schedule of property — Stay of execution — Levy on remainder of property — Appeal.

CASE NOTES

Analysis

Contempt.
Noncompliance.

Contempt.

There was no err in holding appellants in contempt for failing to comply with this section, because the court was not dependent upon affidavits or verified petitions, appellants were served with a copy of the contempt petition, appellants were represented by counsel and had an opportunity to defend at the hearing on the petition for contempt; the court had ordered appellants to file their schedules of assets with the court clerk within forty-five days from the date of the judgments, and the court was not dependent upon affidavits or verified petitions since all the court had to do was examine the court clerk's files and see that the schedules had not been filed within forty-five days to establish a prima facie case of contempt. P. J. Transp., Inc. v. First Serv. Bank, 2012 Ark. App. 292, — S.W.3d — (2012).

Noncompliance.

Defendant's motion for the return of personal property that was seized in response to plaintiff's writ of execution and to claim statutory exemptions was denied because defendant had not filed with the court a schedule, verified by affidavit, setting forth all of his property as required by this section, which Fed. R. Civ. P. 69(a) made applicable to the proceeding, and as to defendant's claim of statutory exemptions under 11 U.S.C.S. § 522(d), defendant failed to offer any evidence that he had filed for bankruptcy, and defendant had not followed the procedures set forth in 11 U.S.C.S. § 521 for filing a schedule of assets. Chanel, Inc. v. Adamson, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 9292 (W.D. Ark. Jan. 29, 2008).

16-66-218. Exemptions from execution under federal bankruptcy proceedings.

RESEARCH REFERENCES

ALR. Jewelry and Clothing as Within Debtor's Exemptions under State Statutes. 44 A.L.R.6th 481.

Construction and Application of Exemption for Firearms under State Law. 46 A.L.R.6th 401.

CASE NOTES

Constitutionality.

Because subdivisions (a)(2) and (4) of this section provide for exemptions in excess of the amount set by the Arkansas Constitution, the statutory exemptions are unconstitutional. In re Kelley, 455 B.R. 710 (Bankr. E.D. Ark. 2011).

16-66-220. Pension and profit-sharing plans.

CASE NOTES

Interpretation.

Subdivision (a)(1) of this section was not unconstitutional, because the IRA exemption was not an absolute exemption of all personal property, and as such, did not offend Ark. Const. Art. 9, § 2; as long as the exemption at issue was not an absolute exemption of all personal property, but instead related only to exempting certain funds from general garnishment stat-

utes, then the exemption did not violate Ark. Const. Art. 9, § 2. Clinical Study Ctrs., Inc. v. Boellner, 2012 Ark. 266, — S.W.3d — (2012).

16-66-221. Schedule of property — Filing.

CASE NOTES

Application and Construction.

This section did not apply to the judgment debtors, because the debtors had not been residents of Arkansas for more than seven years, and subsection (c) merely required the court to include the asset-schedule provision in its order if a resident defendant was required to prepare such a schedule in accordance with subsection (a). Hauser v. Sims, 2012 Ark. App. 295, — S.W.3d — (2012).

Subchapter 3 — Staying, Quashing, or Vacating Writ

16-66-301. Petition to judge, stay, quash, or set aside execution — Proceedings.

CASE NOTES

Noncompliance.

In a case involving a writ of execution, a debtor failed to follow subsection (a) of this section because he did not file a petition verified by an affidavit to challenge the writ; however, despite a trial court's ruling that the debtor's response did not comply with the statute, the trial court considered most or all of the pled defenses. Looney v. Raby, 100 Ark. App. 326, 268 S.W.3d 345 (2007).

Subchapter 4 — Levy and Sale

SECTION.

16-66-402. Levy on real estate — Certificate of levy filed with recorder — Levy as notice to purchaser or mortgagee.

CASE NOTES

Lis Pendens.

Judgment debtor, which obtained a judgment against a debtor in Texas, and recorded its judgment in the real property records of an Arkansas county, had an enforceable judgment lien against the debtor's real property in that county. United States v. Neal, — F. Supp. 2d —, 255 F.R.D. 638, 2008 U.S. Dist. LEXIS 107768 (W.D. Ark. Dec. 30, 2008), aff'd, — F.3d —, 2010 U.S. App. LEXIS 18553 (8th Cir. Ark. 2010).

16-66-416. Return of execution.

(a) All executions shall be returnable within ninety (90) days from their date.

(b)(1) If an execution is satisfied, the officer may return thereon in substance, "satisfied", unless it is by the sale of the property, then that fact must be stated.

(2) If satisfied in part, he or she must state what part and why the residue is not made.

(3) If levied and no sale has been had, for the want of bidders, or no property has been found, he or she must state that fact.

History. Civil Code, § 673; C. & M. Dig., §§ 4353-4356; Pope's Dig., §§ 5365-5368; A.S.A. 1947, §§ 30-431 — 30-434; Acts 2013, No. 319, § 2.

Amendments. The 2013 amendment substituted "within ninety (90) days" for "in sixty (60) days" in (a).

Subchapter 6 — Uniform Enforcement of Foreign Judgments Act

16-66-601. Definition.

RESEARCH REFERENCES

Ark. L. Rev. Recent Developments, Child Support Decrees — Uniform Enforcement of Foreign Judgments Act Mathews v. Mathews, 59 Ark. L. Rev. 803.

CASE NOTES

Analysis

In General.
Authentication.

In General.

Where the circuit court amended a Washington state order to reflect the lower amount of money owed by the employer, as garnishee, to the insurer, the employer's motion was a direct attack on the Washington state default judgment. Nationwide Ins. Enter. v. Ibanez, 368 Ark. 432, 246 S.W.3d 883 (2007).

Authentication.

Petition to revive a foreign judgment was properly granted because it was authenticated under Ark. R. Civ. P. 44 where it was signed by a clerk for a United States Bankruptcy Court; the Arkansas Supreme Court's rule-making authority over procedural matters was exclusive. It was argued that the proper authentication process was not followed when a certified copy of the judgment was attached to an application. Bird v. Shaffer, 2012 Ark. App. 464, — S.W.3d — (2012).

16-66-602. Filing and status of foreign judgments.

CASE NOTES

Analysis

Application.
Proper Registration Accepted.

Application.

Petition to revive a foreign judgment was properly granted because it was authenticated under Ark. R. Civ. P. 44 where it was signed by a clerk for a United States Bankruptcy Court; the Arkansas Supreme Court's rule-making authority over procedural matters was exclusive. It was argued that the proper authentication process was not followed when a certified copy of the judgment was attached to an application. Bird v. Shaffer, 2012 Ark. App. 464, — S.W.3d — (2012).

Proper Registration Accepted.

Judgment debtor, which obtained a judgment against a debtor in Texas, and recorded its judgment in the real property records of an Arkansas county, had an enforceable judgment lien against the debtor's real property in that county. United States v. Neal, — F. Supp. 2d —, 255 F.R.D. 638, 2008 U.S. Dist. LEXIS

107768 (W.D. Ark. Dec. 30, 2008), aff'd, — F.3d —, 2010 U.S. App. LEXIS 18553 (8th Cir. Ark. 2010).

Trial court had jurisdiction to issue a writ of garnishment upon an employer because a company that was awarded a judgment against an employee properly registered the valid Florida judgment in the trial court. Wal-Mart Stores, Inc. v. D.A.N. Joint Venture III L.P., 374 Ark. 489, 288 S.W.3d 627 (2008).

CHAPTER 67

APPEAL

SUBCHAPTER.

Subchapter 2 — Appeal to Circuit Court

SECTION.

16-67-202 — 16-67-208. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as "SECTION 2".

Publisher's Notes. These sections, concerning appeal to circuit court, were repealed by Acts 2013, No. 1148, § 54[55]. The sections were derived from:

16-67-202. Acts 1883, No. 27, § 2, p. 48; C. & M. Dig., § 2288; Pope's Dig., § 2914; A.S.A. 1947, § 27-2002.

16-67-203. Acts 1883, No. 27, § 3, p. 48; C. & M. Dig., § 2289; Pope's Dig., § 2915; A.S.A. 1947, § 27-2003.

16-67-204. Acts 1883, No. 27, § 5, p. 48; C. & M. Dig., § 2291; Pope's Dig., § 2917; A.S.A. 1947, § 27-2005

16-67-205. Acts 1883, No. 27, § 4, p. 48; C. & M. Dig., § 2290; Pope's Dig., § 2916; A.S.A. 1947, § 27-2004.

16-67-206. Chapters of Digest 1869, § 5, p. 109; C. & M. Dig., § 2236; Pope's Dig., § 2864; A.S.A. 1947, § 27-2007.

16-67-207. Acts 1883, No. 27, § 6, p. 48; C. & M. Dig., § 2292; Pope's Dig., § 2918; A.S.A. 1947, § 27-2006.

16-67-208. Acts 1873, No. 31, § 28, p. 53; C. & M. Dig., § 2293; Pope's Dig., § 2919; A.S.A. 1947, § 27-2008.

Subchapter 3 — Appeal to Supreme Court

SECTION.

16-67-302. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as "SECTION 2".

Publisher's Notes. This section, concerning rules for conduct of appeals was repealed by Acts 2013, No. 1148, § 55[56]. The section was derived from Civil Code, § 883; Acts 1913, No. 62, § 1; C. & M. Dig., § 2171; Pope's Dig., § 2777; A.S.A. 1947, § 27-2142.

16-67-305, 16-67-306. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as "SECTION 2".

Publisher's Notes. These sections, concerning survival of right of review and style of parties, were repealed by Acts 2013, No. 1148, § 55[56]. The sections were derived from:

16-67-305. Rev. Stat., ch. 117, § 5; C. & M. Dig., § 2143; Pope's Dig., § 2749; A.S.A. 1947, § 27-2109.

16-67-306. Civil Code, § 860; C. & M. Dig., § 2133; Pope's Dig., § 2739; A.S.A. 1947, § 27-2108.

16-67-308, 16-67-309. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as "SECTION 2".

Publisher's Notes. These sections, concerning writs of error, were repealed by Acts 2013, No. 1148, § 55[56]. The sections were derived from:

16-67-308. Rev. Stat., ch. 117, § 1; C. & M. Dig., § 2132; Pope's Dig., § 2738; A.S.A. 1947, § 27-2105.

16-67-309. Civil Code, § 867; Acts 1899, No. 60, § 1, p. 111; 1915, No. 62, § 1; C. & M. Dig., § 2140; Pope's Dig., § 2746; Acts 1951, No. 213, § 1; A.S.A. 1947, § 27-2106.

16-67-313 — 16-67-332. [Repealed.]

A.C.R.C. Notes. Acts 2013, No. 1148, contained two sections designated as "SECTION 2".

Publisher's Notes. These sections, concerning issues related to court appeals, were repealed by Acts 2013, No. 1148, § 55[56]. The sections were derived from:

16-67-313. Civil Code, § 866; C. & M. Dig., § 2139; Pope's Dig., § 2745; Acts 1953, No. 555, §§ 4, 6; A.S.A. 1947, §§ 27-2107 — 27-2107.2.

16-67-314. Civil Code, § 863; C. & M. Dig., § 2136; Pope's Dig., § 2742; Acts 1953, No. 148, § 1; 1953, No. 555, §§ 14, 20; 1971, No. 206, § 1; A.S.A. 1947, §§ 27-2127.1, 27-2127.8, 27-2128, 27-2129.2.

16-67-315. Civil Code, § 867; C. & M. Dig., § 2140; Pope's Dig., § 2746; Acts 1951, No. 213, § 1; A.S.A. 1947, § 27-2106.

16-67-316. Acts 1953, No. 555, § 16; A.S.A. 1947, § 27-2130.1.

16-67-317. Civil Code, § 876; Acts 1907, No. 137, § 1, p. 329; C. & M. Dig., § 2164; Pope's Dig., § 2770; A.S.A. 1947, § 27-2135.

16-67-318. Civil Code, § 877; C. & M. Dig., § 2165; Pope's Dig., § 2771; A.S.A. 1947, § 27-2136.

16-67-319. Civil Code, § 879; C. & M. Dig., § 2167; Pope's Dig., § 2773; A.S.A. 1947, § 27-2138.

16-67-320. Civil Code, §§ 880, 881; C. & M. Dig., §§ 2168, 2169; Pope's Dig., §§ 2774, 2775; A.S.A. 1947, §§ 27-2139, 27-2140.

16-67-321. Civil Code, § 882; C. & M. Dig., § 2170; Pope's Dig., § 2776; A.S.A. 1947, § 27-2141.

16-67-322. Rev. Stat., ch. 117, §§ 29, 30; C. & M. Dig., §§ 2153, 2154; Pope's Dig., §§ 2759, 2760; A.S.A. 1947, §§ 27-2131, 27-2132.

16-67-323. Rev. Stat., ch. 127, § 2; C. & M. Dig., § 2182; Pope's Dig., § 2791; A.S.A. 1947, § 27-2143.

16-67-324. Civil Code, § 883; Acts 1913, No. 62, § 1; C. & M. Dig., § 2171; Pope's Dig., § 2777; A.S.A. 1947, § 27-2142.

16-67-325. Civil Code, § 16; Acts 1871, No. 48, § 1[16], p. 219; 1891, No. 159, § 2, p. 280; C. & M. Dig., §§ 2176-2178, 2183; Acts 1929, No. 112, §§ 1, 2; Pope's Dig., §§ 2785-2787, 2792; A.S.A. 1947, §§ 27-2144 — 27-2147; Acts 2003, No. 1185, § 204.

16-67-326. Civil Code, §§ 884, 887; Acts 1873, No. 88, § 1[884], p. 213; 1891, No. 159, § 1, p. 280; C. & M. Dig., §§ 2172, 2175; Pope's Dig., §§ 2781, 2784; A.S.A. 1947, §§ 27-2148, 27-2149.

16-67-327. Civil Code, § 884; Acts 1873, No. 88, § 1[884], p. 213; C. & M. Dig., § 1271; Pope's Dig., § 1495; A.S.A. 1947, § 27-2151.

16-67-328. Rev. Stat., ch. 117, § 37; C. &

M. Dig., § 2180; Pope's Dig., § 2789; A.S.A. 1947, § 27-2152.

16-67-329. Rev. Stat., ch. 117, § 42; C. & M. Dig., § 2181; Pope's Dig., § 2790; A.S.A. 1947, § 27-2153.

16-67-330. Civil Code, § 886; C. & M. Dig., § 2174; Pope's Dig., § 2783; A.S.A. 1947, § 27-2154.

16-67-331. Civil Code, § 885; C. & M. Dig., § 2173; Pope's Dig., § 2782; A.S.A. 1947, § 27-2155.

16-67-332. Civil Code, § 883; Acts 1913, No. 62, § 1; C. & M. Dig., § 2171; Pope's Dig., § 2777; A.S.A. 1947, § 27-2142.

CHAPTER 68

COSTS AND BONDS

Subchapter 6 — Incarcerated Persons

16-68-603. Indigency.

CASE NOTES

Notice of Appeal.

Court clerk should have filed a movant's notice of appeal on the day the notice of appeal from the denial of his motion for postconviction relief was filed, whether or not the movant was allowed to proceed in forma pauperis. The motion to file a belated appeal was allowed because, but for this clerical error, the notice of appeal was timely filed. White v. State, 373 Ark. 415, 284 S.W.3d 64 (2008).

16-68-604. Affidavit of inability to pay.

CASE NOTES

Notice of Appeal.

Court clerk should have filed a movant's notice of appeal on the day the notice of appeal from the denial of his motion for postconviction relief was filed, whether or not the movant was allowed to proceed in forma pauperis. The motion to file a belated appeal was allowed because, but for this clerical error, the notice of appeal was timely filed. White v. State, 373 Ark. 415, 284 S.W.3d 64 (2008).

16-68-607. Multiple lawsuits.

CASE NOTES

Application.

Petitioner failed to show that the circuit court erred when it determined his habeas petition was a civil action that constituted one strike for purposes of this section, because § 16-106-202 had no application to this section, and this section did apply, when the circuit court correctly found that the petition for writ of habeas corpus failed to state a claim upon which relief could be granted and the petition did constitute a strike for purposes of that section. McArty v. Hobbs, 2012 Ark. 257, — S.W.3d — (2012).

SUBTITLE 6. CRIMINAL PROCEDURE GENERALLY

CHAPTER 81

ARREST

SUBCHAPTER.

1. General Provisions.

Subchapter 1 — General Provisions

SECTION.

16-81-105. Execution of summons and service of process.

CASE NOTES

Territorial Jurisdiction.

Although an Arkansas deputy did not have authority under this section to arrest an arrestee pursuant to an Arkansas arrest warrant at the arrestee's parents' home, which was located in Oklahoma, the deputy was entitled to qualified immunity as to the arrestee's Fourth Amendment claim because it was objectively reasonable for the deputy to have believed that the arrest was taking place in Arkansas. A 911 call from the home was identified as originating from an Arkansas area code and an Arkansas address, the home's mailbox was located in Arkansas, and the arrest warrant stated that the arrestee resided at the home's address in Arkansas. Engleman v. Murray, 546 F.3d 944 (8th Cir. 2008).

16-81-106. Authority to arrest.

(a) An arrest may be made by a certified law enforcement officer or by a private person.

(b) A certified law enforcement officer may make an arrest:

(1) In obedience to a warrant of arrest delivered to him or her; and

(2)(A) Without a warrant, where a public offense is committed in his or her presence or where he or she has reasonable grounds for believing that the person arrested has committed a felony.

(B) In addition to any other warrantless arrest authority granted by law or court rule, a certified law enforcement officer may arrest a person for a misdemeanor without a warrant if the officer has probable cause to believe that the person has committed battery upon another person, the officer finds evidence of bodily harm, and the officer reasonably believes that there is danger of violence unless the person alleged to have committed the battery is arrested without delay.

(c)(1) A certified law enforcement officer who is outside his or her jurisdiction may arrest without warrant a person who commits an offense within the officer's presence or view if the offense is a felony or a misdemeanor.

(2)(A) A certified law enforcement officer making an arrest under subdivision (c)(1) of this section shall notify the law enforcement agency having jurisdiction where the arrest was made as soon as practicable after making the arrest.

(B) The law enforcement agency shall then take custody of the person committing the offense and take the person before a judge or magistrate.

(3) Statewide arrest powers for certified law enforcement officers will be in effect only when the officer is working outside his or her jurisdiction at the request of or with the permission of the municipal or county law enforcement agency having jurisdiction in the locale where the officer is assisting or working by request.

(4) Any law enforcement agency exercising statewide arrest powers under this section must have a written policy on file regulating the actions of its employees relevant to law enforcement activities outside its jurisdiction.

(d) A private person may make an arrest where he or she has reasonable grounds for believing that the person arrested has committed a felony.

(e) A magistrate or any judge may orally order a certified law enforcement officer or private person to arrest anyone committing a public offense in the magistrate's or judge's presence, which order shall authorize the arrest.

(f) For purposes of this section, the term "certified law enforcement officer" includes a full-time wildlife officer of the Arkansas State Game and Fish Commission so long as the officer shall not exercise his or her authority to the extent that any federal funds would be jeopardized.

(g)(1) The following persons employed as full-time law enforcement officers by the federal, state, county, or municipal government who are empowered to effect an arrest with or without warrant for violations of the United States Code and who are authorized to carry firearms in the performance of their duties shall be empowered to act as officers for the arrest of offenders against the laws of this state and shall enjoy the same immunity, if any, to the same extent and under the same circumstances as certified state law enforcement officers:

(A) Federal Bureau of Investigation special agents;

(B) United States Secret Service special agents;

(C) United States Citizenship and Immigration Services special agents, investigators, and patrol officers;

(D) United States Marshals Service deputies;

(E) Drug Enforcement Administration special agents;

(F) United States Postal Inspection Service postal inspectors;

(G) United States Customs and Border Protection special agents, inspectors, and patrol officers;

(H) United States General Services Administration special agents;

(I) United States Department of Agriculture special agents;

(J) Bureau of Alcohol, Tobacco, Firearms and Explosives special agents;

(K) Internal Revenue Service special agents and inspectors;

(L) Certified law enforcement officers of the United States Department of the Interior, National Park Service, and the United States Fish and Wildlife Service;

(M) Members of federal, state, county, municipal, and prosecuting attorneys' drug task forces;

(N) Certified law enforcement officers of the United States Department of Agriculture, Forest Service; and

(O) United States Treasury Inspector General for Tax Administration special agents.

(2) If an agency described in subdivision (g)(1) of this section changes its name, the law enforcement officers described in subdivision (g)(1) of this section that are employed by the agency remain empowered to act as officers for the arrest of offenders against the laws of this state and retain the same immunity, if any, to the same extent and under the same circumstances as certified state law enforcement officers.

(h) Pursuant to Article 2.124 of the Texas Code of Criminal Procedure, any certified law enforcement officer of the State of Arkansas or law enforcement officer specified in subsection (g) of this section shall be authorized to act as a law enforcement officer in the State of Texas with the same power, duties, and immunities of a peace officer of the State of Texas who is acting in the discharge of an official duty:

(1) During a time in which:

(A)(i) The law enforcement officer from the State of Arkansas is transporting an inmate or criminal defendant from a county in Arkansas that is on the border of Texas to a hospital or other medical facility in a county in Texas that is on the border between the two (2) states.

(ii) Transportation to such a facility shall be for purposes including, but not limited to, evidentiary testing of that inmate or defendant as is authorized pursuant to laws of the State of Arkansas or for medical treatment; or

(B) The law enforcement officer from the State of Arkansas is returning the inmate or defendant from the hospital or facility in Texas to an adjoining county in Arkansas; and

(2) To the extent necessary to:

(A) Maintain custody of the inmate or defendant while transporting the inmate or defendant; or

(B) Retain custody of the inmate or defendant if the inmate or defendant escapes while being transported.

(i) A certified law enforcement officer trained pursuant to a memorandum of understanding between the State of Arkansas and the United States Department of Justice or the United States Department of Homeland Security is authorized to make an arrest in order to enforce federal immigration laws.

History. Crim. Code, §§ 32-35; C. & M. Dig., §§ 2903-2906; Pope's Dig., §§ 3719-3722; Acts 1983, No. 848, § 1; A.S.A. 1947, §§ 43-402 — 43-405; Acts 1987, No. 496, § 1; 1988 (3rd Ex. Sess.), No. 32, § 1; 1989, No. 715, § 1; 1989, No. 846, § 1; 1993, No. 362, § 1; 1993, No. 436, § 1; 1995, No. 719, § 1; 2005, No. 26, § 1; 2005, No. 907, § 4; 2005, No. 1994, § 267; 2009, No. 158, § 1; 2013, No. 423, § 1.

Amendments. The 2009 amendment substituted "making" for "make" in (c)(2)(A).

The 2013 amendment redesignated the introductory language of former (g) as the introductory language of (g)(1); redesignated former (g)(1) through (g)(14) as (g)(1)(A) through (g)(1)(N); added (g)(1)(O) and (g)(2).

U.S. Code. Federal immigration laws are generally found in title 8 of the U.S. Code.

16-81-113. Warrantless arrest for domestic abuse.

(a)(1)(A) Except as provided in subdivision (a)(3) of this section, when a law enforcement officer has probable cause to believe a person has committed acts which constitute a crime under the laws of this state and which constitute domestic abuse as defined in subdivision (b)(1) of this section against a family or household member, the officer may arrest the person without a warrant if the law enforcement officer has probable cause to believe the person has committed those acts within the preceding four (4) hours or within the preceding twelve (12) hours for cases involving physical injury as defined in § 5-1-102(14), even if the incident did not take place in the presence of the law enforcement officer.

(B) The arrest of the person shall be considered the preferred action by the law enforcement officer when evidence indicates that domestic abuse has occurred in addition to a violation of the Arkansas Criminal Code, § 5-1-101 et seq.

(2)(A) When a law enforcement officer receives conflicting accounts of an act of domestic abuse involving family or household members, the law enforcement officer shall evaluate each account separately to determine if one (1) party to the act of domestic abuse was the predominant aggressor.

(B)(i) When determining if one (1) party to an act of domestic abuse is the predominant aggressor, a law enforcement officer shall consider the following factors based upon his or her observation:

(a) Statements from parties to the act of domestic abuse and other witnesses;

(b) The extent of personal injuries received by parties to the act of domestic abuse;

(c) Evidence that a party to the act of domestic abuse acted in self-defense; or

(d) Prior complaints of domestic abuse if the history of prior complaints of domestic abuse can be reasonably ascertained by the law enforcement officer.

(ii) A law enforcement officer may consider any other relevant factors when determining if one (1) party to an act of domestic abuse is the predominant aggressor.

(3)(A) When a law enforcement officer has probable cause to believe a person that is a party to an act of domestic abuse is the predomi-

nant aggressor and the act of domestic abuse would constitute a felony under the laws of this state, the law enforcement officer shall arrest the person who was the predominant aggressor with or without a warrant if the law enforcement officer has probable cause to believe the person has committed the act of domestic abuse within the preceding four (4) hours, or within the preceding twelve (12) hours for cases involving physical injury as defined in § 5-1-102, even if the incident did not take place in the presence of the law enforcement officer.

(B)(i) When a law enforcement officer has probable cause to believe a person who is a party to an act of domestic abuse is the predominant aggressor and the act of domestic abuse would constitute a misdemeanor under the laws of this state, the arrest with or without a warrant of the person who was the predominant aggressor shall be considered the preferred action by the law enforcement officer if there is reason to believe that there is an imminent threat of further injury to any party to the act of domestic abuse and the law enforcement officer has probable cause to believe the person has committed the act of domestic abuse within the preceding four (4) hours or within the preceding twelve (12) hours for cases involving physical injury as defined in § 5-1-102, even if the incident did not take place in the presence of the law enforcement officer.

(ii) When a law enforcement officer has probable cause to believe a person who is a party to an act of domestic abuse is the predominant aggressor and the act of domestic abuse would constitute a misdemeanor under the laws of this state, the law enforcement officer may arrest the person without a warrant if the law enforcement officer has probable cause to believe the person has committed those acts within the preceding four (4) hours, or within the preceding twelve (12) hours for cases involving physical injury as defined in § 5-1-102, even if the incident did not take place in the presence of the law enforcement officer.

(4) Any law enforcement officer acting in good faith and exercising due care in making an arrest for domestic abuse shall have immunity from civil liability.

(b) As used in this section:

(1) "Domestic abuse" means:

(A) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; or

(B) Any sexual conduct between family or household members, whether minors or adults, which constitutes a crime under the laws of this state; and

(2) "Family or household member" means spouses, former spouses, parents and children, persons related by blood within the fourth degree of consanguinity, any child residing in the household, persons who have resided or cohabited together presently or in the past, persons who have or have had a child in common, and persons who have been in a dating relationship together presently or in the past; and

(3)(A) "Dating relationship" means a romantic or intimate social relationship between two (2) individuals which shall be determined by examining the following factors:

(i) The length of the relationship;

(ii) The type of the relationship; and

(iii) The frequency of interaction between the two (2) individuals involved in the relationship.

(B) "Dating relationship" shall not include a casual relationship or ordinary fraternization in a business or social context between two (2) individuals.

(c)(1) Any person arrested under the provisions of this section shall be taken before a judicial officer without unnecessary delay.

(2) The judicial officer shall conduct a pretrial release inquiry of the person.

(d) The inquiry should take the form of an assessment of factors relevant to the release decision such as:

(1) The person's employment status, history, and financial condition;

(2) The nature and extent of his or her family relationships;

(3) His or her past and present residence;

(4) His or her character and reputation;

(5) Persons who agree to assist him or her in attending court at the proper times;

(6) The nature of the charge and any mitigating or aggravating factors that may bear on the likelihood of conviction and the possible penalty;

(7) The person's prior criminal record, if any, and if he or she previously has been released pending trial, whether he or she appears as required;

(8) Any facts indicating the possibility of violations of law if the person is released without restrictions; and

(9) Any other facts tending to indicate that the person has strong ties to the community and is not likely to flee the jurisdiction of the court.

(e) The judicial officer may impose one (1) or more of the following conditions of release:

(1) Placing the person under the care of a qualified person or organization agreeing to supervise the person and assist him or her in appearing in court;

(2) Imposing reasonable restrictions on the activities, movements, associations, and residences of the person; and

(3) Imposing any other reasonable restrictions to ensure the appearance of the person at future judicial hearings.

History. Acts 1991, No. 268, §§ 1, 2; 1999, No. 1550, § 1; 2001, No. 1421, § 1; 2001, No. 1678, § 3; 2005, No. 1875, § 3; 2007, No. 204, § 1.

16-81-115. Certified law enforcement officers from adjoining states.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Practice, Procedure, and Courts, 28 U. Ark. Little Rock L. Rev. 377.

16-81-116. Warrantless arrest for violation of interference with emergency communication in the first degree, § 5-60-124, or interference with emergency communication in the second degree, § 5-60-125.

If a law enforcement officer has probable cause to believe a person has violated § 5-60-124 or § 5-60-125, the officer may arrest the person without a warrant even if the incident did not take place in the presence of the officer if the officer has probable cause to believe the person has violated the section within the preceding:

(1) Four (4) hours; or

(2) Twelve (12) hours in cases involving physical injury as defined in § 5-1-102(14).

History. Acts 2009, No. 1456, § 1.

16-81-117. Interpreters for deaf persons who are arrested.

(a) If a person who is deaf is arrested for a criminal offense and taken into custody, the arresting law enforcement officer and his or her superiors shall procure a qualified interpreter in order to properly interrogate the deaf person and to interpret the person's statement.

(b) If a qualified interpreter is not present when a deaf person makes a statement while in custody for an arrest, the statement is not admissible in court.

History. Acts 2013, No. 237, § 5.

Subchapter 2 — Stop and Search

16-81-203. Grounds to reasonably suspect.

RESEARCH REFERENCES

U. Ark. Little Rock. L. Rev. Annual Survey of Case Law, Criminal Law, 28 U. Ark. Little Rock L. Rev. 700.

CASE NOTES

Analysis

Informant's Information.
Reasonableness.
"Reasonably Suspect."

Informant's Information.

Motion to suppress evidence was improperly granted because, where police had known an informant to give reliable information in the past, and accurate information was received from the informant about defendant and his vehicle, officers had specific, particularized, and articulable reasons for thinking that defendant was involved in criminal activity, which justified a stop under Ark. R. Crim. P. 3.1. Because the officers had reasonable suspicion to stop and detain the vehicle, any pretext on the part of the officers was irrelevant; moreover, the officers did not need any additional reasonable suspicion to justify a canine sniff, which was not a search under the Fourth Amendment. State v. Harris, 372 Ark. 492, 277 S.W.3d 568 (2008).

Officer had reasonable suspicion to stop and detain defendant based on a reliable confidential informant's information that he was going to deliver methamphetamine at a specified convenience store and defendant's arrival at the store, followed by the informant's call to defendant that he was at the wrong store and defendant's then leaving the first store and driving toward the other store. Owens v. State, 2011 Ark. App. 763, 387 S.W.3d 250 (2011).

Officer had reasonable suspicion to stop defendant and investigate drug-related criminal activity because a reliable known informant provided information about a delivery of methamphetamine. The fact that defendant arrived in a black car rather than a white car of the same make as described did not undermine reasonable suspicion. James v. State, 2012 Ark. App. 118, 390 S.W.3d 95 (2012).

Reasonableness.

Trial court did not err in denying defendant's motion to suppress evidence seized as a result of a detention and a canine sniff of defendant's truck because an officer had reasonable suspicion to detain defendant under subdivisions (1), (3), (6) and (9) of this section; after stopping defendant for driving a vehicle with a broken tail light, the officer noted that defendant refused to make eye contact, exhibited increased nervousness, and was known to have had prior drug problems. Johnson v. State, 2012 Ark. App. 167, 392 S.W.3d 897 (2012).

"Reasonably Suspect."

Trial court properly denied defendant's motion to suppress because an officer had reasonable suspicion that defendant was carrying a weapon and, therefore, a frisk of defendant was not an illegal search; the officer testified that defendant's shrugged shoulders, no eye contact, and tightening up indicated to the officer that defendant was lying about not having any weapons or anything illegal. Gilbert v. State, 2010 Ark. App. 857, 379 S.W.3d 774 (2010), review denied, — S.W.3d —, 2011 Ark. LEXIS 345 (Ark. Jan. 27, 2011).

Circuit court's ruling denying defendant's motion to suppress evidence recovered in a search of her truck after she was stopped for a traffic violation was not clearly against the preponderance of the evidence. Factors that combined to give a state trooper a reasonable suspicion that defendant was engaged in criminal activity were: (1) one month earlier he had stopped the same truck and arrested defendant's passenger for drunk driving and possession of marijuana; (2) during a criminal history check, the trooper discovered defendant had been previously arrested; (3) the trooper had information from a local police department that defendant was suspected of drug dealing; (4) defendant was nervous; and (5) it was late at night. Menne v. State, 2012 Ark. 37, 386 S.W.3d 451 (2012).

CHAPTER 82
SEARCH AND SEIZURE

Subchapter 2 — Warrants

16-82-201. Issuance of search warrants upon oral testimony.

CASE NOTES

Jurisdiction.

Osceola District Court judge had jurisdiction to issue a search warrant for a residence in the Chickasawba District. Wagner v. State, 2010 Ark. 389, 368 S.W.3d 914 (2010), rehearing denied, — S.W.3d —, 2010 Ark. LEXIS 612 (Ark. Dec. 2, 2010).

CHAPTER 84
BAIL GENERALLY

SUBCHAPTER.
2. Forfeiture.

Subchapter 1 — General Provisions

16-84-114. Surrender of defendant.

CASE NOTES

License Revocation.

Circuit court did not err in affirming the revocation of a bail bond agent's license by the Arkansas Professional Bail Bondsman Licensing Board for violating §§ 17-19-101 et seq., because there was substantial evidence before the Board from which it could conclude that the agent had knowledge of and authorized a nonlicensed individual's actions; the agent instructed the individual, who was hired by the owner of a bonding company to perform office work, to "catch" or apprehend someone in violation of subdivision (b)(2) of this section, and the agent expressly testified that the individual acted pursuant to his direction. Hester v. Ark. Prof'l Bail Bondsman Licensing Bd., 2011 Ark. App. 389, 383 S.W.3d 925 (2011).

Subchapter 2 — Forfeiture

SECTION.
16-84-201. Action on bond in district courts.

SECTION.
16-84-207. Action on bail bond in circuit courts.

16-84-201. Action on bond in district courts.

(a)(1)(A) If the defendant fails to appear for trial or judgment, or at any other time when his or her presence in district court may be lawfully required, or to surrender himself or herself in execution of the judgment, the district court may direct the fact to be entered on the minutes and shall promptly issue an order requiring the surety to appear, on a date set by the district court not more than one hundred

twenty (120) days from the date notice is sent by certified mail to the surety company at the address shown on the bond, whether or not it is received by the surety, to show cause why the sum specified in the bail bond or the money deposited in lieu of bail should not be forfeited.

(B) The one-hundred-twenty-day period in which the defendant must be surrendered or apprehended under subdivision (c)(2) of this section begins to run from the date notice is sent by certified mail to the surety company at the address shown on the bond, whether or not it is received by the surety.

(2) The order shall also require the officer who was responsible for taking of bail to appear unless:

(A) The surety is a bail bondsman; or

(B) The officer accepted cash in the amount of bail.

(b) The appropriate law enforcement agencies shall make every reasonable effort to apprehend the defendant.

(c)(1) If the defendant is surrendered or arrested, or good cause is shown for his or her failure to appear before judgment is entered against the surety, the district court shall exonerate a reasonable amount of the surety's liability under the bail bond.

(2) However, if the surety causes the apprehension of the defendant or the defendant is apprehended within one hundred twenty (120) days from the date notice is sent by certified mail to the surety company at the address shown on the bond, whether or not it is received by the surety, a judgment or forfeiture of bond may not be entered against the surety, except as provided in subsection (e) of this section.

(d) If after one hundred twenty (120) days from the date notice is sent by certified mail to the surety company at the address shown on the bond, whether or not it is received by the surety, the defendant has not surrendered or been arrested, the bail bond or money deposited in lieu of bail may be forfeited without further notice or hearing.

(e) If the defendant is located in another state and the location is known within one hundred twenty (120) days from the date notice is sent by certified mail to the surety company at the address shown on the bond, whether or not it is received by the surety, the appropriate law enforcement officers shall cause the arrest of the defendant and the surety shall be liable for the cost of returning the defendant to the district court in an amount not to exceed the face value of the bail bond.

(f)(1) In determining the extent of liability of the surety on a bond forfeiture, the court, without further notice or hearing, may take into consideration the expenses incurred by the surety in attempting to locate the defendant and may allow the surety credit for the expenses incurred.

(2) To be considered by the court, information concerning expenses incurred in attempting to locate the defendant should be submitted to the court by the surety no later than the one-hundred-twentieth day from the date notice is sent by certified mail to the surety company at the address shown on the bond, whether or not it is received by the surety.

(g) Notwithstanding any law to the contrary, a district court may suspend a bail bond company's or agent's ability to issue bail bonds in its court if the bail bond company or agent fails to comply with an order of the district court or fails to pay forfeited bonds in accordance with a district court's order.

History. Acts 1989, No. 417, § 5; 1991, No. 991, § 1; 1993, No. 841, § 1; 1995, No. 1106, § 1; 1999, No. 567, § 5; 2003, No. 752, § 2; 2003, No. 1572, § 1; 2009, No. 633, § 16.

Amendments. The 2009 amendment inserted "from the date notice is sent by certified mail to the surety company at the address shown on the bond, whether or not it is received by the surety" in (d), and substituted the same language for "after the issuance of the order" in (a)(1)(A), for "of receipt of written notification to the surety of the defendant's failure to appear" in (c)(2), and for "after the date of receipt of written notification to the surety of the defendant's failure to appear" in (e) and (f)(2); added (g); and made minor stylistic changes.

16-84-207. Action on bail bond in circuit courts.

(a) If a bail bond is granted by a judicial officer, it shall be conditioned on the defendant's appearing for trial, surrendering in execution of the judgment, or appearing at any other time when his or her presence in circuit court may be lawfully required under Rule 9.5 or Rule 9.6 of the Arkansas Rules of Criminal Procedure, or any other rule.

(b)(1) If the defendant fails to appear at any time when the defendant's presence is required under subsection (a) of this section, the circuit court shall enter this fact by written order or docket entry, adjudge the bail bond of the defendant or the money deposited in lieu thereof to be forfeited, and issue a warrant for the arrest of the defendant.

(2) The circuit clerk shall:

(A) Notify the sheriff and each surety on the bail bond that the defendant should be surrendered to the sheriff as required by the terms of the bail bond; and

(B) Immediately issue a summons on each surety on the bail bond requiring the surety to personally appear on the date and time stated in the summons to show cause why judgment should not be rendered for the sum specified in the bail bond on account of the forfeiture.

(c)(1)(A) If the defendant is apprehended and brought before the circuit court within seventy-five (75) days of the date notification is sent under subdivision (b)(2)(A) of this section, then no judgment of forfeiture may be entered against the surety.

(B) The surety shall be liable for the cost of returning the defendant to the circuit court in an amount not to exceed the face amount of the bond.

(2)(A) If the defendant is apprehended and brought before the circuit court after the seventy-five-day period under subdivision (c)(1) of this section, the circuit court may exonerate the amount of the surety's liability under the bail bond as the circuit court determines in its discretion and, if the surety does not object, enter judgment accordingly against the surety.

(B) In determining the extent of liability of the surety on the bond, the circuit court may take into consideration the actions taken and the expenses incurred by the surety to locate the defendant, the expenses incurred by law enforcement officers to locate and return the defendant, and any other factors the circuit court finds relevant.

(3) The appropriate law enforcement agencies shall make every reasonable effort to apprehend the defendant.

(d)(1) If the surety does not consent to the entry of judgment in the amount determined under subsection (c) of this section, or if the defendant has not surrendered or been brought into custody, then at the time of the show cause hearing unless continued to a subsequent time, the circuit court shall determine the surety's liability and enter judgment on the forfeited bond.

(2) The circuit court may exercise its discretion in determining the amount of the judgment and may consider the factors listed in subsection (c) of this section.

(e)(1) No pleading on the part of the state shall be required in order to enforce a bond under this section.

(2) The summons required under subsection (b) of this section shall be made returnable and shall be executed as in civil actions, and the action shall be docketed and shall proceed as an ordinary civil action.

(3) The summons shall be directed to and served on the surety in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure, and the surety's appearance pursuant to the summons shall be in person and not by filing an answer or other pleading.

(f) Notwithstanding any law to the contrary, a circuit court may suspend a bail bond company's or agent's ability to issue bail bonds in its court if the bail bond company or agent fails to comply with an order of the circuit court or fails to pay forfeited bonds in accordance with a circuit court's order.

History. Acts 2003, No. 752, § 1; 2003, No. 1472, § 1; 2009, No. 290, § 1.

Amendments. The 2009 amendment, in (e)(3), substituted "shall" for "may," deleted "an agent of" preceding "the surety," and inserted "in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure."

CASE NOTES

Analysis

Forfeiture of Bond.
Issuance of Summons.
Strict Compliance Required.

Forfeiture of Bond.

Trial court properly exercised jurisdiction and ordered forfeiture of a bond where there was no requirement in subdivision (e)(2) of this section that the state file a separate civil action; in fact, subdivision (e)(1) stated that no pleading on the state's part was required to enforce a bond. First Ark. Bail Bonds, Inc. v. State, 102 Ark. App. 282, 284 S.W.3d 115 (2008).

Issuance of Summons.

Trial court erred in ruling that a bond company had forfeited a bond when a summons was not immediately issued for a show cause hearing, as required by

subdivision (b)(2)(B) of this section. First Ark. Bail Bonds, Inc. v. State, 373 Ark. 470, 284 S.W.3d 484 (2008).

Strict Compliance Required.

Because strict compliance with subdivision (b)(2)(B) of this rule was not had because summons was not issued "immediately" as required, a circuit court's judgment of forfeiture against a bail bond company was reversed, and the matter was remanded. First Ark. Bail Bonds, Inc. v. State, 373 Ark. 470, 284 S.W.3d 484 (2008).

Because a circuit court's forfeiture of a bond failed to strictly comply with this section, a forfeiture judgment against a bail bond company was reversed for the reasons set forth in a prior opinion of the court in a similar case, and the matter was remanded for an order consistent with the court's opinion. First Ark. Bail Bonds, Inc. v. State, 373 Ark. 468, 284 S.W.3d 483 (2008).

CHAPTER 85

PRETRIAL PROCEEDINGS

SUBCHAPTER.

Subchapter 3 — Information and Bill of Particulars

16-85-301. Bill of particulars.

CASE NOTES

Sufficiency.

Defendant was not entitled to a bill of particulars, pursuant to subsection (a) of this section; a bill of particulars as to the precise time offenses were committed was not necessary because time was not material to allegations of rape and sexual assault in the second degree. Wallis v. State, 2010 Ark. App. 238, 374 S.W.3d 737 (2010), review denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 259 (May 6, 2010).

Subchapter 4 — Indictment Generally

16-85-403. Contents.

CASE NOTES

Sufficiency.

State did not need to track the language of § 5-13-211 in order to charge defendant because merely citing the statute was sufficient; the state did not need to amend the information because it correctly cited the statute that defendant was charged with violating, and the additional language in the information was in the nature of explanatory text that was superfluous and did not make it fatally defective such as to warrant reversal. Barnes v. State, 94 Ark. App. 321, 230 S.W.3d 311 (2006).

16-85-407. Amendment of indictment and filing of bill of particulars.

CASE NOTES

Analysis

Change in Nature or Degree.
No Effect on Jurisdiction.
Prejudice or Surprise.
Validity of Amendment.

Change in Nature or Degree.

Denial of a continuance to a defendant did not violate due process; although the information was amended the day before trial from a charge of rape of someone less than 14 years old by forcible compulsion to rape by forcible compulsion in violation of § 5-14-103(a)(1), the nature of the crime charged did not change, pursuant to subsection (b) of this section. Green v. State, 2012 Ark. 19, 386 S.W.3d 413 (2012).

Trial court did not erroneously allow an information charging rape by forcible compulsion and terroristic threatening to be amended on the first day of trial to add physical helplessness as an alternative means of committing rape because the amendment addressed only the manner by which the rape was committed and did not change the nature or degree of the rape charge, and defendant could not show that the amendment resulted in prejudice through unfair surprise because he failed to move for a continuance and failed to claim surprise after he was put on notice that the State planned to amend the information. Harris v. State, 2012 Ark. App. 651, — S.W.3d —, 2012 Ark. App. LEXIS 765 (Nov. 14, 2012).

No Effect on Jurisdiction.

Defendant was properly convicted of rape despite his claim that he was charged with first-degree sexual assault, and the information against him was not amended. This section related to matters of notice and prejudice and provided a criminal defendant with protection against being prejudiced through surprise; thus, it was procedural in nature, not jurisdictional, and a violation of the statute did not divest the trial court of its authority to convict and sentence a defendant. VanOven v. State, 2011 Ark. App. 46, 380 S.W.3d 507 (2011).

Prejudice or Surprise.

There was no violation of this section when an information in a capital murder trial was amended a few days before trial to include a premeditation and deliberation element because defendant was not surprised by such; her own admissions showed that she acted in a premeditated and deliberative manner when she shot her husband as he slept, she had wanted to leave for a long time, and she fled with some of his belongings. Therefore, there was nothing wrong with including the premeditation and deliberation elements in the jury instructions. Terry v. State, 371 Ark. 50, 263 S.W.3d 528 (2007).

Validity of Amendment.

Even though a prosecutor was not allowed to amend a felony information under § 16-85-407 in a theft of property case to show the value of a vehicle stolen since that changed the class of the crime, there was no reversible error because the sentence imposed was less than the maximum for either the amended or the original charge. Therefore, defendant was not prejudiced. Ward v. State, 97 Ark. App. 294, 248 S.W.3d 489 (2007).

Circuit court did not err when it allowed the state to amend a felony information to include a habitual-offender allegation on the morning of defendant's trial for possession of a firearm by a felon. because the amendment did not change the nature or degree of the crime, but simply authorized a more severe punishment. Glaze v. State, 2011 Ark. App. 283, 378 S.W.3d 897 (2011), rehearing denied, — S.W.3d —, 2011 Ark. App. LEXIS 517 (Ark. Ct. App. May 25, 2011), vacated, 2011 Ark. 464, 385 S.W.3d 203 (2011).

State's amendment of an information did not violate this section because the amendment did not constitute a severance of offenses under Ark. R. Crim. P. 22.1(c), and the evidence would have been introduced in any case as part of the events leading up to the shooting whether it was included in the charging instrument or not; the only offense charged in the case was first-degree battery under § 5-13-

201(a)(3), and the amendment did not change the nature or degree of the crime but merely clarified the manner in which the offense was committed. Reed v. State, 2011 Ark. App. 352, 383 S.W.3d 881 (2011).

Trial court committed no error in allowing the state to orally amend the information to include the contra pacem clauses as required by Ark. Const. Art. 7, § 49 because the amendment conformed to the requirements of this section; the amendment adding the contra pacem clauses did not change the nature or degree of the crimes charged, nor did it compromise defendant's ability to make a defense, the amendment resulted in no prejudice, and defendant did not claim surprise or request a continuance after the amendment was granted. Walker v. State, 2012 Ark. App. 61, 389 S.W.3d 10 (2012), review denied, — S.W.3d —, 2012 Ark. LEXIS 95 (Ark. Feb. 23, 2012).

Cited: Hoyle v. State, 2011 Ark. 321, 388 S.W.3d 901 (2011).

Subchapter 5 — Grand Jury Proceedings

SECTION.

16-85-510. Disclosure of media sources.

Before any editor, reporter, or other writer for any newspaper, periodical, radio station, television station, or Internet news source, or publisher of any newspaper, periodical, or Internet news source, or manager or owner of any radio station shall be required to disclose to any grand jury or to any other authority the source of information used as the basis for any article he or she may have written, published, or broadcast, it must be shown that the article was written, published, or broadcast in bad faith, with malice, and not in the interest of the public welfare.

History. Init. Meas. 1936, No. 3, § 15, Acts 1937, p. 1384; Pope's Dig., § 3828; Acts 1949, No. 254, § 1; A.S.A. 1947, § 43-917; Acts 2011, No. 799, § 1.

Amendments. The 2011 amendment substituted "media" for "newspaper, periodical, or radio station" in the section heading; and inserted "television station, or Internet news source" and "or Internet news source."

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. The Ben J. Altheimer Symposium: A Reporter's Privilege: Legal Fact or Fiction: Article: The Reporter's Privilege in Arkansas: An Overview with Commentary, 29 U. Ark. Little Rock L. Rev. 1.

Subchapter 7 — Arraignment and Pleading Generally

SECTION.

16-85-709. Pleas generally.

RESEARCH REFERENCES

ALR. Adequacy of Defense Counsel's Representation of Criminal Client Regarding Guilty Pleas — Probation, Parole, or Pardon Possibilities. 31 A.L.R.6th 49.

16-85-714. No contact orders.

(a) As used in this section, a "no contact order" is an order issued by a court to a defendant at or after arraignment on charges that prohibits the defendant from contacting directly or indirectly a person in any manner or from being within a certain distance of the person's home or place of employment.

(b)(1) A court may issue a no contact order under this section in addition to any other condition of release from custody that is imposed by the court if it appears that there exists a danger that a defendant will commit a serious crime, seek to intimidate a witness, or otherwise unlawfully interfere with the orderly administration of justice.

(2) The no contact order issued under this section shall be in effect until it is modified or terminated by the court.

(3) A no contact order issued under this section may contain, without limitation, the following:

(A) The reasons the court issued the no contact order in specific terms and description in reasonable detail of the purpose of the order;

(B)(i) A prohibition against the defendant's approaching or communicating with a particular person or class of persons, either through a third party or by telephone, electronic communication, or in writing.

(ii) A no contact order issued under this section shall not be deemed to prohibit any lawful or ethical activity of defendant's counsel;

(C) A prohibition against the defendant's going to certain described geographical areas or premises, including an imposition of a restriction that the defendant stay at least one thousand five hundred feet (1,500') from a person's location;

(D) A prohibition against the defendant's possessing a dangerous weapon or engaging in certain described activities, including the ingestion of alcohol or certain drugs; and

(E) A requirement that the defendant report regularly to and remain under the supervision of an officer of the court.

(4) When a no contact order is issued under this section, the court shall inform the defendant of the penalties for failure to comply with the conditions or terms of the order.

(5) All terms of a no contact order issued under this section shall be reduced to writing, and a copy shall be given to the defendant.

(6)(A) If a defendant violates a no contact order issued under this section, the court shall issue a warrant directing that the defendant be arrested and immediately taken before any court having jurisdiction.

(B) The court shall then have authority to detain the defendant for a period of time not to exceed twenty-four (24) hours, unless the violation occurs on a Friday or a holiday, in which case the time period shall be forty-eight (48) hours, during which time the prosecuting attorney shall file a petition to revoke the defendant's

appearance bond or modify the conditions of the defendant's release, alleging the following:

(i) That the defendant has knowingly violated the terms of a no contact order issued under this section;

(ii) That relevant information has become known to the prosecuting attorney warranting the modification of or revocation of the defendant's appearance bond; and

(iii) That a law enforcement officer had reasonable grounds to believe that the defendant violated the terms of a no contact order issued under this section and that it was impracticable to secure an arrest warrant at the time of arrest.

(C)(i) The defendant shall be entitled to a hearing on the petition to modify or revoke the defendant's appearance bond within forty-eight (48) hours of the defendant's appearance before the court, unless the violation occurs on a Friday or a holiday, in which case the hearing shall be within seventy-two (72) hours.

(ii) If after a hearing the court finds that the defendant knowingly violated the terms of a no contact order issued under this section, the court may impose different or additional conditions of release or revoke his or her appearance bond.

(c)(1) A court may set the duration of a no contact order issued under this section for an additional period of time after the adjudication of the offense for which the defendant was originally charged if it determines the additional period of time is necessary to protect the safety of a person, persons residing with the person, or members of the person's immediate family.

(2) The duration or extension of the no contact order shall not be for more than one (1) year from the date of issuance or, if the original charge is adjudicated with a finding of the defendant's guilt, from the date of sentencing.

(d) Upon conviction, violation of a no contact order issued under this section is a Class A misdemeanor.

History. Acts 2011, No. 589, § 1.

CHAPTER 86

INSANITY DEFENSE

SECTION.

16-86-103. Examination and observation.

(a) If the court orders the defendant to undergo examination and observation, the examination and observation of the defendant shall be made by:

(1) A licensed psychiatrist who:

(A) Has successfully completed or is currently participating in:

(i) A post-residency fellowship in forensic psychiatry accredited by the American Board of Psychiatry and Neurology, Inc.; or

(ii) Has successfully completed a forensic certification course approved by the Department of Human Services; and

(B) Is currently approved by the Department of Human Services to administer forensic examinations; or

(2) A licensed psychologist who has:

(A) Successfully completed or is currently participating in a formal postdoctoral fellowship training program in forensic psychology or has successfully completed a forensic certification course approved by the Department of Human Services; and

(B) Is currently approved by the Department of Human Services to administer forensic examinations.

(b)(1) Upon completion of the examination at a local mental health clinic or center, the court may commit the defendant to the Arkansas State Hospital for further examination and observation if the court determines in its sole discretion that the further examination and observation is warranted.

(2) The psychiatrist or the psychologist who examined and observed the defendant shall make a written report to the court and shall indicate:

(A) A description of the nature of the examination;

(B) A substantiated diagnosis in the terminology of the American Psychiatric Association's current edition of the Diagnostic and Statistical Manual of Mental Disorders;

(C) An opinion on whether the defendant, as a consequence of mental disease or defect, lacks the capacity to understand the proceedings against him or her and to assist effectively in his or her own defense;

(D) A description of any evidence that the defendant is feigning signs and symptoms of mental disease or defect;

(E)(i) When directed by the court, an opinion as to the extent, if any, to which the capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was impaired at the time of the conduct alleged.

(ii) This opinion shall also include a description of the reasoning used by the examiner to support the examiner's opinion;

(F) When directed by the court, an opinion as to the capacity of the defendant to have the culpable mental state that is required to establish an element of the offense charged;

(G) The signs and symptoms of mental disease or defect that led to the opinion on the presence of mental disease or defect; and

(H) The evidence that supports the opinion of the examiner on the capacity of the defendant to:

(i) Understand the proceedings against him or her; and

(ii) Assist in his or her own defense.

History. Acts 1971, No. 433, ch. 6, § 7; 1973, No. 95, § 1; 1983, No. 191, § 1; A.S.A. 1947, § 43-1301; Acts 2001, No. 1551, § 3; 2013, No. 981, § 4.

Amendments. The 2013 amendment substituted "either" for "or is currently participating in" in (a)(1)(A); in (a)(1)(A)(ii), substituted "A" for "Has successfully completed a" and deleted "Health and" before "Human Services"; substituted "department" for "Department of Human Services" throughout (a); and rewrote (a)(2).

16-86-104. Admission to State Hospital — Report.

(a) If the Director of the Division of Behavioral Health Services of the Department of Human Services determines that a defendant should be admitted to the Arkansas State Hospital for examination and observation, the defendant shall be committed to the Arkansas State Hospital for a period not exceeding one (1) month or until a time as the Director of the Division of Behavioral Health Services believes is necessary for the examination and observation of the defendant.

(b) The qualified psychiatrist or qualified psychologist who is designated to examine and observe the mental condition of the defendant shall prepare a written report indicating separately the defendant's mental condition during the period of the examination and the defendant's probable mental condition at the time of the commission of the alleged offense.

(c) The report shall be certified by the Director of the Arkansas State Hospital or a designee under his or her seal or by an affidavit duly subscribed and sworn to by him or her before a notary public who shall affix the notary public's certificate and seal to it.

History. Acts 1971, No. 433, ch. 6, § 7; 1973, No. 95, § 1; 1983, No. 191, § 1; A.S.A. 1947, § 43-1301; Acts 2001, No. 1551, § 4; 2013, No. 980, § 6.

Amendments. The 2013 amendment substituted "Behavioral" for "Mental" in (a).

CHAPTER 87

PUBLIC DEFENDERS

SUBCHAPTER.

Subchapter 2 — Arkansas Public Defender Commission

SECTION.

A.C.R.C. Notes. Acts 2013, No. 1394, § 12, provided: "DUTIES OF DEPENDENCY-NEGLECT APPEALS ATTORNEY. The Public Defender Commission shall utilize Dependency-Neglect Appeals Attorneys exclusively to write appeals in dependency-neglect cases.

"The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014."

Effective Dates. Acts 2011, No. 39, § 2: Feb. 16, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the proper funding of defense counsel for indigent persons is of manifest importance; that a recent decision by the Arkansas Supreme Court has cast doubt on how the expenses of privately retained defense attorneys are to be paid, if at all; and that this act is immediately necessary because there is a question how the Arkansas Public Defender Commission should deal with the issue of privately retained attorneys. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

16-87-201. Definitions.

CASE NOTES

Analysis

Expenses of Defendant Represented by Retained
—Counsel

Expenses of Defendant Represented by Retained

—Counsel

Request for a writ of prohibition filed by the Arkansas Public Defender Commission (APDC) was denied because, pursuant to § 16-87-212, the circuit court clearly had jurisdiction to order APDC to make payments for expenses for an indigent defendant even though defendant was represented by retained counsel, not the APDC. Ark. Pub. Defender Comm'n v. Pulaski County Circuit Court, Fourth Div., 2010 Ark. 224, 365 S.W.3d 193 (2010), rehearing denied, Ark. Pub. Defender Comm'n v. Wright, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 368 (June 24, 2010).

Cited: Jones v. State, 367 Ark. 476, 241 S.W.3d 268 (2006).

16-87-203. Powers and duties.

(a) The Arkansas Public Defender Commission shall have the following powers and duties:

(1) To establish policies and standards for the public defender system throughout the state, including standards for determining who qualifies as an indigent person;

(2) To establish policies and standards for the organization and operation of public defenders' offices throughout the state, including funding, compensation, staffing, and standards of experience for attorneys assigned to particular cases;

(3) To allocate personnel for each public defender's office throughout the state;

(4) To require annual reports regarding expenditures, caseloads, and status of cases from each public defender;

(5) To evaluate the performance of the Executive Director of the Arkansas Public Defender Commission, the Capital, Conflicts, and Appellate Office, the Trial Public Defender Office, each public defender, and private attorneys assigned to represent indigent persons;

(6) To approve the reassignment of cases from one public defender to another public defender in an adjacent area for the purpose of avoiding conflicts or adjusting caseloads;

(7) To approve the purchase, rental, and sharing of office space, equipment, or personnel among public defenders in the event and to the extent such items have been provided through an appropriation of the General Assembly;

(8) To establish employee personnel policies for the commission and the public defenders;

(9) To accept and to authorize a public defender to accept moneys, gifts, grants, or services from any public or private source;

(10) To enter and authorize a public defender to enter into contracts with individuals, educational institutions, nonprofit associations, or state or federal agencies, including contracts for the provision of legal services related to the defense of indigent persons;

(11) To maintain for each judicial district a current list of private attorneys who are willing to accept court appointments and who meet any other qualifications established by the commission;

(12) To maintain a separate list of private attorneys who are willing to accept court appointments in capital cases and who meet any other qualifications established by the commission;

(13) To oversee the Juvenile Ombudsman Division of the Arkansas Public Defender Commission; and

(14) To perform all other functions and duties as authorized by law.

(b) The commission shall operate the trial public defender system in such a manner that the respective trial public defenders shall not be deemed to be part of the same office for purposes of appointment in conflict of interest situations and in such a manner that the Capital, Conflicts, and Appellate Office shall not be deemed a part of the same office as any trial public defender for purposes of appointment in conflict of interest situations.

(c) The commission shall make an annual report to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the Chief Judge of the Court of Appeals regarding the efforts of the commission to implement this subchapter.

(d) There is hereby created on the books of the Treasurer of State, Auditor of State, and Chief Fiscal Officer of the State a fund to be known as the "Public Defender Fund" to be used exclusively by the commission, as appropriated by the General Assembly.

History. Acts 1993, No. 1193, § 11; 1997, No. 788, § 18; No. 1341, § 18; 1999, No. 1580, § 8; 2001, No. 1799, § 1.

16-87-212. Court fees and expenses.

(a)(1) The Arkansas Public Defender Commission is authorized to pay for certain expenses regarding the defense of indigents.

(2)(A) The expenses shall include, but shall not necessarily be limited to, fees for counsel appointed by the court, expert witnesses, temporary investigators, testing, and travel.

(B)(i) Expenses shall not include attorney's fees for counsel privately retained for the benefit of an indigent defendant for that defendant's defense.

(ii) The commission may authorize the payment of expenses of counsel privately retained for the benefit of an indigent defendant, provided counsel complies with the standards set by the commission under this subchapter governing counsel appointed by the court or employed or contracted by the commission.

(3)(A) Whenever a judge orders an authorized payment in a case involving an indigent person, a copy of the order accompanied by a detailed explanation of services rendered, time spent, and expenses incurred shall be transmitted to the commission, and the commission shall set the amount of compensation.

(B) Orders as authorized throughout this chapter shall be paid by the commission provided sufficient funds are available.

(b)(1) With the approval of the Executive Director of the Arkansas Public Defender Commission, trial public defenders, appointed private attorneys, and the Capital, Conflicts, and Appellate Office are authorized to utilize the services of the State Crime Laboratory for pathology and biology, toxicology, criminalistics, raw drug analysis, latent fingerprint identification, questioned documents examination, firearms and toolmarks identification, and in other such areas as the trial judge may deem necessary and appropriate.

(2) If approved by the executive director, the State Crime Laboratory shall provide the requested services.

(c) At the discretion of the commission, capital murder cases and all proceedings under the Arkansas Rules of Criminal Procedure, Rule 37.5, shall be paid entirely by the commission.

History. Acts 1993, No. 1193, § 10; 1997, No. 788, § 22; No. 1341, § 22; 2001, No. 1343, § 2; 2001, No. 1799, § 6; 2011, No. 39, § 1.

Amendments. The 2011 amendment inserted (a)(2)(B); substituted "counsel appointed by the court" for "appointed counsel" in (a)(2)(A); and, in (b)(1), substituted "Executive Director of the Arkansas Public Defender Commission" for "executive director" and deleted "hereby" following "Appellate Office are."

CASE NOTES

Analysis

Expenses of Defendant Represented by Retained.
—Counsel.

Expenses of Defendant Represented by Retained.

—Counsel.

Request for a writ of prohibition filed by the Arkansas Public Defender Commission (APDC) was denied because, pursuant to this section, the circuit court clearly had jurisdiction to order APDC to make payments for expenses for an indigent defendant even though defendant was represented by retained counsel, not the APDC. Ark. Pub. Defender Comm'n v. Pulaski County Circuit Court, Fourth Div., 2010 Ark. 224, 365 S.W.3d 193 (2010), rehearing denied, Ark. Pub. Defender Comm'n v. Wright, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 368 (June 24, 2010).

16-87-213. Certificate of indigency.

(a)(1)(A) Any person charged with an offense punishable by imprisonment who desires to be represented by an appointed attorney shall file with the court in which the person is charged a written certificate of indigency.

(B) The certificate of indigency shall be in a form approved by the Arkansas Public Defender Commission and shall be provided by the court in which the person is charged.

(C) The certificate of indigency shall be executed under oath by the person charged with the offense and shall state in bold print that a false statement is punishable as a Class D felony.

(D) Upon execution, the certificate of indigency shall be made a permanent part of the indigent person's records.

(E)(i) The certificate of indigency also shall function as a legally binding contractual agreement in which the person charged agrees that in exchange for legal representation provided by the state, he or she shall pay the amount ordered by the court, both upon the initial appointment of an attorney under subdivision (a)(2)(A) of this section and for any amount ordered by the court after the case has concluded.

(ii) The certificate of indigency shall contain a notice that reads, "Your state income tax refund, legal settlements or favorable verdicts, lottery winnings, or any moneys or property forfeited by the state shall be intercepted to satisfy this debt under Ark. Code Ann. § 16-87-217.".

(2)(A) If the court in which the person is charged determines that the person qualifies for the appointment of an attorney by being indigent or partially indigent under standards set by the commission, the court, except as otherwise provided by this subchapter, shall appoint the trial public defender to represent the person before the court.

(B) The court shall not appoint an attorney prior to review of the submitted affidavit.

(b)(1) At the time of appointment of an attorney, the court immediately shall assess a fee of not less than ten dollars ($10.00) nor more than four hundred dollars ($400) to be paid to the commission in order to defray the costs of the public defender system.

(2) The fee under subdivision (b)(1) of this section may be waived if the court finds such an assessment to be too burdensome.

(3) The fee under subdivision (b)(1) of this section shall be collected at the beginning of the proceeding and is separate from any additional attorney's fee that might be assessed by the court.

(4)(A) The commission shall deposit the money collected under subdivision (b)(1) of this section into a separate account within the State Central Services Fund entitled "Public Defender User Fees" to which access shall only be available to the commission.

(B) The commission may carry over any funds remaining in the separate account under subdivision (b)(4)(A) of this section at the end of the fiscal year to the subsequent year.

(c) All fees under this subchapter shall be collected by the county or city official, agency, or department designated under § 16-13-709 as primarily responsible for the collection of fines assessed in the circuit courts and district courts of this state, and the collecting county or city official, agency, or department shall remit to the commission by the tenth day of each month all of the fees collected on forms provided by the commission.

(d) The appointing court may at any time review and redetermine whether or not a person is an indigent person who qualifies for the appointment of an attorney pursuant to this subchapter.

(e) This section does not bar a prosecution for perjury or other offenses based on misrepresentation of financial status.

History. Acts 1993, No. 1193, § 13; 1999, No. 1564, § 5; 2001, No. 1799, § 7; 2001, No. 1809, § 6; 2003, No. 1765, § 23; 2013, No. 961, § 1.

A.C.R.C. Notes. Acts 2013, No. 1394, § 9, provided: "FEE GENERATION AND SUPPORT — COURTS. Unless specified otherwise in Arkansas Code § 5-4-303(g) and Arkansas Code 16-87-213 the monies collected by the courts under the authority of § 5-4-303(g) and 16-87-213 shall be deposited into the State Treasury to the credit of the State Central Services Fund.

"In the event that the law requires that the fees levied under § 5-4-303(g) be deposited into the State Administration of Justice Fund, the State Treasurer shall transfer the amount of the fees collected each month under the authority of Arkansas Code § 5-4-303(g) from the State Administration of Justice Fund to the State Central Services Fund.

"The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014."

Amendments. The 2013 amendment rewrote this section.

16-87-216. Juvenile Ombudsman Division.

(a) For purposes of this section, the following definitions shall apply:

(1) "Best interests of the juvenile" includes those actions and courses of action which:

(A) Keep the juvenile safe from physical, mental, or sexual abuse while in state custody;

(B) Are considerate of the court's recommendations and adhere to the juvenile's treatment plan; and

(C) Work toward rehabilitating the juvenile;

(2) "Division" means the Division of Youth Services of the Department of Human Services;

(3) "Executive director" means the Executive Director of the Arkansas Public Defender Commission; and

(4) "Juvenile" means any juvenile who has been committed to the custody of the Division of Youth Services pursuant to a disposition order of the juvenile division of circuit court.

(b)(1) It is the intent of the General Assembly to create a Juvenile Ombudsman Division of the Arkansas Public Defender Commission to provide for independent oversight of the Division of Youth Service's facilities and programs that are unlicensed or unaccredited.

(2) There shall be created within the commission a juvenile ombudsman and assistant juvenile ombudsmen that shall be appointed by the executive director.

(3) The minimum qualifications for an ombudsman shall be as follows:

(A) A master's degree in:

(i) Social work;

(ii) Psychology;

(iii) Law; or

(iv) A related field; or

(B) A bachelor's degree in:

(i) Social work;

(ii) Psychology; or

(iii) A related field; or

(C) Four (4) years' direct experience in programs serving juvenile offenders and their families.

(4) No waiver of the minimum qualifications in subdivision (b)(3) of this section shall be permitted.

(c) The powers and duties of the ombudsman shall be as follows:

(1) The ombudsman shall be given online access to all tracking systems maintained by the Division of Youth Services, including but not limited to the:

(A) Incident report tracking system and the disposition of incidents reported therein;

(B) Parent helpline tracking system; and

(C) Juvenile tracking system;

(2) The ombudsman may attend scheduled meetings or reviews of juvenile intake, program progress, or aftercare planning;

(3) The ombudsman shall be given access to any meeting or document that would be accessible to the general public through the Freedom of Information Act of 1967, § 25-19-101 et seq.;

(4) The ombudsman shall be given reasonable prior notice of all major activities of the Audit and Compliance Section of the Division of Youth Services and shall be permitted to accompany the monitor or monitoring team of the Division of Youth Services on any monitoring visit or audit;

(5) The ombudsman shall be subject to the same compliance with all procedures, policies, and laws regarding the confidentiality of juveniles

committed to the Division of Youth Services as required by division employees;

(6) The ombudsman may initiate and maintain contact with any juvenile during the juvenile's custodial placement or while on aftercare status;

(7) The ombudsman shall be given access to the juveniles and to the juveniles' records and meetings of program progress and case planning at all the privately contracted facilities of the Division of Youth Services;

(8)(A) To identify instances where necessary services are not being provided with respect to the safety, health, education, and rehabilitation of the juvenile as identified in a treatment plan.

(B) When a problem is identified, the ombudsman shall notify the Director of the Division of Youth Services of the Department of Human Services or his or her designee, the juvenile court having jurisdiction, the juvenile's parents or guardian, and the juvenile's attorney or attorneys of the problem;

(9) To document a juvenile's questions, complaints, and concerns related to the juvenile's health, safety, education, and treatment and seek answers to those questions and address the complaints and concerns in an expedient manner;

(10) To request and review, as needed, all records on the history and treatment of the juvenile while in the custody of the Division of Youth Services or in aftercare, including related agency and court records;

(11) To make unannounced visits to the unlicensed or unaccredited facilities of the Division of Youth Services, whether state-run or privately operated, to assure the safety and well-being of the juveniles;

(12) Upon receipt of a complaint involving alleged child maltreatment, the ombudsman shall immediately report the alleged incident to the Child Abuse Hotline, the facility director, and the Director of the Division of Youth Services or his or her designee, who shall be responsible for ensuring the juvenile's safety;

(13)(A) To prepare annual reports on the overall functioning of the division's ability to provide for the safety, health, education, and rehabilitation of juveniles committed to the Division of Youth Services.

(B) The report shall be submitted to:

(i) The Director of the Department of Human Services and the Director of the Division of Youth Services;

(ii) The House Committee on Aging, Children and Youth, Legislative and Military Affairs;

(iii) The Senate Interim Committee on Children and Youth;

(iv) The judges of the juvenile divisions of circuit court; and

(v) The Governor;

(14) To prepare annual reports comparing the court's recommendations, the treatment plans of the Division of Youth Services, and the actual services provided; and

(15) The audit and compliance process of the Division of Youth Services to verify that each juvenile has unhampered access to a

grievance process that addresses the juvenile's questions, complaints, and concerns in a timely manner in accordance with policy and procedure of the Division of Youth Services or applicable statute.

(d) The ombudsman shall have no authority to command or otherwise instruct any division employee or contracted agent of the Division of Youth Services regarding any aspect of programming or operations, nor may the ombudsman alter or countermand any instruction to, or participation by, juveniles that is consistent with the policy and procedure of the Division of Youth Services or otherwise part of the treatment plan, program, or operations associated with the agency.

History. Acts 1999, No. 1580, §§ 1-6; 2001, No. 1797, § 1; 2003, No. 1008, §§ 1, 2.

A.C.R.C. Notes. Acts 2013, No. 1396, § 10, provided: "TRANSFER OF FUNDS FOR THE JUVENILE OMBUDSMAN PROGRAM. The Department of Human Services shall provide funding in an amount not to exceed $240,000 for the fiscal year ending June 30, 2014 for the Juvenile Ombudsman Program described in ACA 16-87-216. Upon request by the Executive Director of the Arkansas Public Defender Commission, the Chief Fiscal Officer of the State shall transfer an amount not to exceed $240,000 for the fiscal year ending June 30, 2014 from an account designated by the Director of the Department of Human Services to the State Central Services Fund as a direct revenue to fund the Juvenile Ombudsman Program."

16-87-217. Recovery of fees owed.

(a)(1) The State of Arkansas and the county may file a civil action for recovery of money expended in the representation of a person who is determined by a court not to have been indigent at the time expenditures were made.

(2) Suit shall be brought within three (3) years after the date a certificate of indigency is filed.

(b)(1) The State of Arkansas also shall recover any fees owed or money expended in the representation of a person who is determined by a court not to have been indigent at the time expenditures were made by attaching a lien to the person's legal settlements or favorable verdicts, lottery winnings, or any moneys or property forfeited by the state.

(2) To effectuate a lien under subdivision (b)(1) of this section, a public defender shall file a notice of the lien setting forth services rendered to the person and a claim for reasonable value of the services with the clerk of the circuit court not later than ten (10) days after the disposition of the case.

(3) The person named in the notice of the lien shall be served personally with a copy of the lien in court immediately at the end of the trial court proceedings.

(4) The circuit court shall determine whether all or any part of the lien shall be allowed.

(c) In the event that a circuit court, county court, or district court renders a judgment for recovery of money in a civil action as described in this section, the Arkansas Public Defender Commission may file a claim for a setoff of the judgment amount against the person's state

income tax refund as a claimant agency authorized under § 26-36-301 et seq.

History. Acts 2013, No. 961, § 2.
A.C.R.C. Notes. Acts 2013, No. 961, contained two sections designated as "Section 2".

16-87-218. Schedule of costs for legal services.

(a) As used in this section:

(1) "Early disposition" means a disposition that occurs within sixty (60) days of the date of the person's arrest or before the state files a criminal information, whichever occurs sooner; and

(2) "Extended matter" means a case that involves legal proceedings that extend beyond a completed trial.

(b) At the time of final disposition of any charges pending against a defendant represented by a public defender, the public defender shall ask the court to enter a judgment against the defendant in favor of the State of Arkansas for legal services rendered by the public defender.

(c) The amount of judgment shall be based on the following nonbinding fee schedule:

(1) Capital murder, § 5-10-101, in which the death penalty was given, including any appeal and post-conviction remedy, twelve thousand five hundred dollars ($12,500);

(2) Capital murder, § 5-10-101, in which the death penalty was not given, murder in the first degree, § 5-10-102, or Class Y felony:

(A) For an early disposition, five hundred dollars ($500);

(B) For a negotiated plea or disposition before trial, two thousand five hundred dollars ($2,500); or

(C) For a trial or an extended matter, seven thousand five hundred dollars ($7,500);

(3) Any other felony homicide, §§ 5-10-103 — 5-10-106, Class A felony, or Class B felony:

(A) For an early disposition, two hundred fifty dollars ($250);

(B) For a negotiated plea or disposition before trial, one thousand two hundred fifty dollars ($1,250); or

(C) For a trial or an extended matter, five thousand dollars ($5,000);

(4) A Class C felony, Class D felony, unclassified felony, or driving while intoxicated, § 5-65-103, third offense:

(A) For an early disposition, one hundred twenty-five dollars ($125);

(B) For a negotiated plea or disposition before trial, six hundred twenty-five dollars ($625); or

(C) For a trial or an extended matter, two thousand five hundred dollars ($2,500);

(5) Any other misdemeanor:

(A) For an early disposition, sixty-five dollars ($65.00);

(B) For a negotiated plea or disposition before trial, one hundred twenty-five dollars ($125); or

(C) For a trial or an extended matter, five hundred dollars ($500);

(6) Any juvenile matter:

(A) For an early disposition, sixty-five dollars ($65.00);

(B) For a negotiated plea or disposition before trial, one hundred twenty-five dollars ($125); or

(C) For a trial or an extended matter, five hundred dollars ($500); or

(7) Any post-conviction relief that is not a direct appeal of the conviction:

(A) For an early disposition, two hundred dollars ($200);

(B) For a negotiated plea or disposition before trial or hearing, four hundred dollars ($400); or

(C) For a trial or hearing or an extended matter, six hundred twenty-five dollars ($625).

(d) A court is not required to enter a judgment against a defendant under this section.

History. Acts 2013, No. 961, § 3.

Subchapter 3 — Funding

SECTION.

16-87-302. Funding of public defenders.

(a) The Arkansas Public Defender Commission shall be responsible for the payment of the following:

(1) The salaries of public defenders;

(2) The salaries of secretaries and other support staff of the public defender's office;

(3) The payment of the costs of certain expenses, as authorized by § 16-87-212.

(b) Each county or counties within a judicial district shall be responsible for the payment of the following:

(1)(A) The cost of facilities, equipment, supplies, and other office expenses necessary to the effective and efficient operation of the public defender's office.

(B) Funding for these expenditures may be from:

(i) A county administration of justice fund;

(ii) A county's general fund;

(iii) A county's public defender fund;

(iv) A county's indigent defense fund;

(v) A county's public defender investigator fund; or

(vi) Any other fund authorized by law for that purpose.

(C) These expenditures shall comply with an itemized, line-item budget appropriated by the quorum court; and

(2) The compensation of additional personnel within the office of the public defender, when approved in advance by the quorum court.

History. Acts 1997, No. 788, § 12; 1997, No. 1341, § 12; 2001, No. 1799, § 8; 2011, No. 1201, § 1.

Amendments. The 2011 amendment added (b)(1)(B) and (b)(1)(C).

CHAPTER 88

JURISDICTION AND VENUE

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

Effective Dates. Acts 2007, No. 663, § 56: Jan. 1, 2012.

16-88-101. Jurisdiction of courts for certain offenses generally.

(a) The jurisdiction of the various courts of this state for the trial of offenses shall be as follows:

(1) The Senate shall have exclusive jurisdiction of impeachment;

(2) The Supreme Court shall have general supervision and control over all inferior courts in criminal cases;

(3) The circuit court shall have original jurisdiction, exclusive of the district court, for the trial of offenses defined as felonies by state law and shall have original jurisdiction concurrent with the district court for the trial of offenses defined as misdemeanors by state law; and

(4) The district court shall have original jurisdiction, exclusive of the circuit court, for the trial of violations of ordinances of any town, city, or county within the territorial jurisdiction of the district court and shall have original jurisdiction concurrent with the circuit court for the trial of offenses defined as misdemeanors and violations by state law and committed within the territorial jurisdiction of the district court.

(b) Where an indictment is found in the circuit court for an offense within its jurisdiction, the circuit court shall have jurisdiction of all the degrees of the offense and of all the offenses included in the one (1) charge, although some of those degrees or included offenses are within the exclusive jurisdiction of the district court.

(c) A district court may issue arrest warrants and search warrants and may perform other pretrial functions, as authorized by the Arkansas Rules of Criminal Procedure, in the prosecution of a person for an offense within the exclusive jurisdiction of the circuit court.

History. Crim. Code, §§ 10, 11; Acts 1871, No. 49, § 1 [10], p. 255; C. & M. Dig., § 2863; Pope's Dig., § 3679; A.S.A. 1947, §§ 43-1405, 43-1406; Acts 2003, No. 1185, §§ 207, 208; 2007, No. 663, § 53; 2009, No. 398, § 1; 2011, No. 1218, §§ 11, 12.

Amendments. The 2009 amendment substituted "any town, city, or county within the territorial jurisdiction of the district court" for "the city or county in which the district court is located" in (a)(4), and made a related change.

The 2011 amendment inserted "and violations" in (a)(4).

CASE NOTES

Search Warrants.

Osceola District Court judge had jurisdiction to issue a search warrant for a residence in the Chickasawba District. Wagner v. State, 2010 Ark. 389, 368 S.W.3d 914 (2010), rehearing denied, — S.W.3d —, 2010 Ark. LEXIS 612 (Ark. Dec. 2, 2010).

16-88-104. Presumption of jurisdiction.

CASE NOTES

Proof.

Pursuant to this section, a trial court had jurisdiction over defendant's trial for theft by receiving because the evidence demonstrated that, at the very least, the disposal of the stolen property occurred in Arkansas. Johnson v. State, 2012 Ark. App. 615, — S.W.3d — (2012).

Cited: Clark v. State, 2012 Ark. App. 496, — S.W.3d — (2012).

16-88-105. Territorial jurisdiction of certain courts generally.

(a) The jurisdiction of the Senate and Supreme Court embraces the whole state.

(b) The local jurisdiction of circuit courts shall be of offenses committed within the respective counties in which they are held.

(c) The local jurisdiction of district courts shall be of offenses committed within the limits of the jurisdiction of the courts, as prescribed by the statutes creating or regulating them.

History. Crim. Code, §§ 14-16; C. & M. Dig., §§ 2864-2866; Pope's Dig., §§ 3680-3682; A.S.A. 1947, §§ 43-1407 — 43-1409; Acts 2007, No. 663, § 54.

Effective Dates. Acts 2007, No. 663, § 56, as amended by Acts 2009, No. 345, § 7, provided:

"(a) Sections 2 through 15 of this act are effective January 1, 2008.

"(b) Sections 16 through 50 and 52 through 55 of this act are effective January 1, 2012.

"(c) Section 51 of Act 663 of 2007 is effective January 1, 2012, except:

"(1) That portion of Section 51 of Act 663 of 2007 that is referred to in Act 663 of 2007 as 16-17-933, establishing the Cleburne County District Court and departments of that court, codified as § 16-17-936 is effective July 1, 2009; and

"(2) That portion of Section 51 of Act 663 of 2007 that is referred to in Act 663 of 2007 as 16-17-950, establishing the St. Francis County District Court and departments of that court, codified as § 16-17-954 is effective July 1, 2009."

CASE NOTES

Analysis

Circuit Court.
Venue.

Circuit Court.

Pursuant to State v. Osborn, 345 Ark. 196, 45 S.W.3d 373 (2001), and § 16-88-108(c), jurisdiction in defendant's case was proper in either Calhoun County or Dallas County; had defendant not committed the crimes of aggravated robbery and kidnapping in Calhoun County, he would not have been placed into custody in Dallas County, he could not have escaped from that custody, and the prosecution in Calhoun County would not have been delayed. Avery v. State, 93 Ark. App. 112, 217 S.W.3d 162 (2005).

Venue.

Ark. R. Crim. P. 21.3 did not preclude a prosecution for second-degree sexual assault because it did not occur in the same jurisdiction and venue as other offenses; the sexual assault in Sebastian County did not arise from the same criminal episode as similar offenses charged in Crawford County, which allegedly occurred within a span of four years. Rape was not a continuing offense, §16-88-108 did not apply because the charged offenses of sexual assault was alleged to have been committed entirely within Sebastian County, and the offenses were not related under Rule 21.3. Bean v. State, 2012 Ark. App. 643, — S.W.3d —, 2012 Ark. App. LEXIS 738 (Nov. 7, 2012).

16-88-108. Jurisdiction of counties — Offenses generally.

CASE NOTES

Analysis

Jurisdiction.
Offenses in More Than One County.

Jurisdiction.

While defendant worked for the sheriff's department, she was authorized to use the department's credit card only for county purchases; her use of the card for personal purchases was sufficient to support her conviction for fraudulently using a credit card in violation of § 5-37-207(a)(4). Because it was undisputed that the purchases took place in Pulaski County, Arkansas, the Pulaski County Circuit Court had jurisdiction over the case in accordance with subsection (c) of this section. Baker v. State, 2009 Ark. App. 788, — S.W.3d — (2009).

Offenses in More Than One County.

Pursuant to subsection (c) of thjis section, a trial court had jurisdiction over defendant's trial for theft by receiving because the evidence demonstrated that, at the very least, the disposal of the stolen property occurred in Arkansas. Johnson v. State, 2012 Ark. App. 615, — S.W.3d — (2012).

Ark. R. Crim. P. 21.3 did not preclude a prosecution for second-degree sexual assault because it did not occur in the same jurisdiction and venue as other offenses; the sexual assault in Sebastian County did not arise from the same criminal episode as similar offenses charged in Crawford County, which allegedly occurred within a span of four years. Rape was not a continuing offense, this section did not apply because the charged offenses of sexual assault was alleged to have been committed entirely within Sebastian County, and the offenses were not related under Rule 21.3. Bean v. State, 2012 Ark. App. 643, — S.W.3d —, 2012 Ark. App. LEXIS 738 (Nov. 7, 2012).

16-88-113. Jurisdiction of counties — Stolen property.

CASE NOTES

Proof.

Pursuant to subsection (A) of thsi section, a trial court had jurisdiction over defendant's trial for theft by receiving because the evidence demonstrated that, at the very least, the disposal of the stolen property occurred in Arkansas. Johnson v. State, 2012 Ark. App. 615, — S.W.3d — (2012).

16-88-116. Traffic citations issued within a town or city with a district court — Placement on docket.

All traffic citations issued within the boundaries of a town or city of this state which has a district court shall be placed on the docket of the district court of that town or city, unless the presiding judge of that court authorizes a transfer to another court exercising jurisdiction over the area in which the citation was issued.

History. Acts 2003, No. 1032, § 1; 2007, No. 663, § 55.

Effective Dates. Acts 2007, No. 663, § 56, as amended by Acts 2009, No. 345, § 7, provided:

"(a) Sections 2 through 15 of this act are effective January 1, 2008.

"(b) Sections 16 through 50 and 52 through 55 of this act are effective January 1, 2012.

"(c) Section 51 of Act 663 of 2007 is effective January 1, 2012, except:

"(1) That portion of Section 51 of Act 663 of 2007 that is referred to in Act 663 of 2007 as 16-17-933, establishing the Cleburne County District Court and departments of that court, codified as § 16-17-936 is effective July 1, 2009; and

"(2) That portion of Section 51 of Act 663 of 2007 that is referred to in Act 663 of 2007 as 16-17-950, establishing the St. Francis County District Court and departments of that court, codified as § 16-17-954 is effective July 1, 2009."

CHAPTER 89

TRIAL AND VERDICT

SECTION.

RESEARCH REFERENCES

ALR. Propriety of Use of Multiple Juries at Joint Trial of Multiple Defendants in State Criminal Prosecution. 41 A.L.R.6th 295.

16-89-104, 16-89-105. [Repealed.]

Publisher's Notes. These sections, concerning interpreters in criminal actions, were repealed by Acts 2013, No. 237, §§ 6, 7. The sections were derived from:

16-89-104. Acts 1973, No. 555, § 3;

A.S.A. 1947, § 43-2101.1; Acts 2001, No. 424, § 3.

16-89-105. Acts 1979, No. 664, §§ 1, 2; A.S.A. 1947, §§ 5-715.1, 5-715.2; Acts 1991, No. 469, § 2.

16-89-107. Trial of issues of law or fact.

CASE NOTES

Analysis

Jury Questions.
Questions of Law.

Jury Questions.

State inmate's federal habeas claim that the Supreme Court of Arkansas erred in rejecting his postconviction jury instruction argument because the Sixth Amendment right to present a complete defense included the right to have the credibility of a confession determined by the jury, and the jury had to be instructed on the issue was procedurally barred because it was not "fairly presented" to the appropriate state court, and further, the jury instruction claim lacked merit even if not procedurally barred because under subdivision (b)(1) of this section, voluntariness was decided by the court, not the jury. Rucker v. Norris, 563 F.3d 766 (8th Cir. 2009), cert. denied, — U.S. —, 130 S. Ct. 401, 175 L. Ed. 2d 275 (2009).

Questions of Law.

Pro se defendant's sufficiency of the evidence challenge was not preserved as he failed to make a motion for a directed verdict before a trial court. He did not request a jury nullification instruction, nor was he entitled to one as, under subdivision (a)(3) of this section, all questions of law were decided by the trial court. Bower v. State, 2010 Ark. 456, — S.W.3d — (2010).

Cited: Young v. State, 370 Ark. 147, 257 S.W.3d 870 (2007).

16-89-111. Evidence generally.

(a) The state shall first offer the evidence in support of an indictment or information.

(b) The defendant or his or her counsel shall then offer the defendant's evidence in support of his or her defense.

(c) The parties may then respectively offer rebutting evidence only, unless the court for good reason, in furtherance of justice, permits them to offer evidence upon their original cases.

(d) A confession of a defendant, unless made in open court, does not warrant a conviction unless:

(1) Accompanied with other proof that the offense was committed; or

(2) Supported by substantial independent evidence that would tend to establish the trustworthiness of the confession.

(e)(1)(A) A conviction or an adjudication of delinquency may not be had in any case of felony upon the testimony of an accomplice, including in the juvenile division of circuit court, unless corroborated by other evidence tending to connect the defendant or the juvenile with the commission of the offense.

(B) The corroboration under subdivision (e)(1)(A) of this section is not sufficient if it merely shows that the offense was committed and the circumstances of the offense.

(2) However, a conviction may be had in misdemeanor cases upon the testimony of an accomplice.

History. Crim. Code, §§ 222-224, 239, 240; Acts 1883, No. 3, § 1, p. 2; C. & M. Dig., §§ 3173-3175, 3181, 3182; Pope's Dig., §§ 4009-4011, 4017, 4018; A.S.A. 1947, §§ 43-2112 — 43-2116; Acts 2001, No. 903, § 1; 2013, No. 983, § 1.

Amendments. The 2013 amendment added "or information" in (a); inserted the (d)(1) designation; added (d)(2); and rewrote (e)(1)(B).

CASE NOTES

Analysis

Applicability.
Accomplice Testimony.
—Appeal.
—Corroboration.
Confessions.
Corpus Delicti Rule.

Applicability.

In a case in which a minor was adjudicated delinquent pursuant to a juvenile court's finding that he committed the criminal offense of misdemeanor theft by receiving, in violation of § 5-36-106(a), the minor unsuccessfully argued that a witness's testimony had to be corroborated. Since the minor had been charged with a misdemeanor, subdivision (e)(1) of this section did not apply. R.W. v. State, 2010 Ark. App. 220, — S.W.3d — (2010).

Accomplice Testimony.

Evidence was sufficient to corroborate accomplice testimony and to convict defendant of first degree murder and theft where, in addition to the testimony of defendant's wife, who was an accomplice, defendant's own statements to the police, his conduct before and after the crime, and statements of the victim's friends regarding her fear of defendant tended to connect him to the crimes; further, although there was no evidence that defendant ever drove victim's Cadillac or had the vehicle in his possession, the jury might have determined that defendant facilitated the theft by leaving the accomplice without a vehicle at the victim's house, and there was evidence that the theft of the Cadillac was part of the plan to murder the victim. MacKool v. State, 365 Ark. 416, 231 S.W.3d 676 (2006).

Trial court did not err by denying defendant's motion for a directed verdict on his capital murder conviction because the evidence was sufficient to support defendant's conviction of the underlying felony, aggravated robbery, even after eliminating the testimony of one of defendant's accomplices. Evidence showed that: (1) defendant had the purpose of committing a theft with the use of physical force, as he and three other individuals went to a witness's house to acquire ammunition for their firearm; (2) the fourth individual testified that defendant and three men arrived at his trailer where defendant displayed a gun, and that he provided ammunition for the gun; (3) a second witness, one of the three men who accompanied defendant, testified that he heard two gunshots fired after the two other men left the victim's apartment after the struggle between defendant and the victim ensued; and (4) the chief medical examiner testified that the victim died from a gunshot wound. Gardner v. State, 362 Ark. 413, 208 S.W.3d 774 (2006).

There was sufficient evidence to support convictions for aggravated robbery and capital murder based on defendant's admission that she held the victim's hands down while he was beaten inside an apartment during an alleged robbery and the testimony of an accomplice waiting outside; the accomplice testimony was sufficiently corroborated. Johnson v. State, 366 Ark. 8, 233 S.W.3d 123 (2006), appeal dismissed, — Ark. —, — S.W.3d —, 2007 Ark. LEXIS 251 (2007).

Evidence was sufficient to sustain defendant's kidnapping conviction where defendant's accomplice testified that defendant killed the victim, and an officer testified that defendant stated that the accomplice attacked the victim, knocked him down, taped him in a chair, and that the victim was "moaning" and "in a bad way" before he died; although there was a discrepancy as to which individual attacked the victim, both statements pointed to defendant's involvement in the victim's murder. Holsombach v. State, 368 Ark. 415, 246 S.W.3d 871 (2007).

Because three of the state's witnesses were not charged as accomplices, and de-

fendant neither requested that the trial court declare them accomplices nor proffered an accomplice jury instruction for the record, his argument that they were accomplices and that, without their testimony, the state would not have been able to prove its case, was not preserved for appeal. Boldin v. State, 373 Ark. 295, 283 S.W.3d 565 (2008).

Defendant's convictions for two counts of capital murder were appropriate because there was sufficient evidence to corroborate an accomplice's testimony under former § 43-2116; after eliminating the accomplice's testimony, other testimony still independently established the crimes and tended to connect defendant with their commission. Defendant's former wife testified that he was not home on the night in question, that a shotgun was missing, and that defendant told the wife's daughter that she would not have to return to her father's home; the father was one of the victims. Wertz v. State, 374 Ark. 256, 287 S.W.3d 528 (2008).

Where defendant's friend testified that defendant tried to rob the victim in his truck and shot him when he resisted, defendant's fingerprints were found on the truck and the blood on the gun matched defendant's DNA. Even if the friend was deemed an accomplice, there was sufficient corroborating evidence for purposes of this section to support defendant's conviction for capital murder. Bush v. State, 374 Ark. 506, 288 S.W.3d 658 (2008).

Defendant's convictions for capital murder and kidnapping were appropriate because a witness' testimony alone was enough to corroborate an accomplice's testimony against defendant, pursuant to subdivisions (e)(1)(A) and (B) of this section. Evidence showed that bullets found near the victims' bodies were fired from a .22 caliber rifle and a .38 caliber revolver and according to another witness, an individual wanted to buy a .38 caliber revolver from defendant; essentially, when all of the evidence was viewed in a light most favorable to the state, it tended to connect defendant to the commission of the crimes. Gilcrease v. State, 2009 Ark. 298, 318 S.W.3d 70 (2009).

Evidence was sufficient to sustain drug and firearm convictions because the testimony of defendant's wife that defendant bought the cocaine and that they were both involved in a drug-dealing operation was corroborated by other evidence that tended to connect defendant with possession of the drugs. Defendant not only was a co-owner of the car but he was driving it when he was stopped by the police for speeding, defendant admitted to the police that he was in possession of the loaded handgun that was in plain view and easily accessible to him at the time of the stop. Layton v. State, 2009 Ark. App. 96, 302 S.W.3d 610 (2009).

There was insufficient evidence corroborating the testimony of an accomplice to adjudicate a defendant as a delinquent juvenile because there was no substantial evidence that tended to connect defendant with the commission of the crime: there was no conclusive proof that the crime took place during the time alleged, defendant's location during this time was approximately a quarter of a mile away; other evidence established an extremely narrow window of time in which defendant could have committed the crime; and substantial evidence was also lacking with regard to defendant's association with the accomplice who had confessed to the crime in a manner suggestive of joint participation. Westbrook v. State, 2009 Ark. App. 723, — S.W.3d — (2009).

Substantial evidence supported defendant's convictions for commercial burglary, criminal mischief, and breaking and entering because the testimony of defendant's accomplice, who was defendant's son, was sufficiently corroborated, as required by subdivision (e)(1) of this section, by an officer's testimony as to the items he found in defendant's truck, matching the description of items stolen from a convenience store. The accomplice admitted that he and defendant entered the store by using a cable to pull open the front doors and that he and defendant used bolt cutters and a pry bar to break into gaming machines, and these items, along with packages of cigarettes stolen from the store, were found by police officers in defendant's truck. Dunlap v. State, 2010 Ark. App. 582, — S.W.3d — (2010).

Appellant's conviction for delivery of methamphetamine was affirmed because the jury was properly instructed that the witness's testimony must be corroborated and an officer and the witness both testified that the crime of delivery of metham-

phetamine occurred. Hall v. State, 2010 Ark. App. 717, — S.W.3d — (2010).

In a capital murder trial, a circuit court did not err in denying defendant's motion for directed verdict because there was sufficient evidence to corroborate an accomplice's testimony; even if the accomplice's testimony was eliminated, the testimony of a police officer and the victim's nephew was consistent with the accomplice's testimony of the events surrounding the murder, the testimony of several police officers established defendant was in possession of the murder weapon four days after the crime occurred, and the testimony of several law enforcement officials established defendant's flight from the vicinity of the crime, constituting corroboration of all the other evidence establishing defendant's guilt. Taylor v. State, 2011 Ark. 10, — S.W.3d — (2011).

In defendant's capital murder trial, the state provided sufficient evidence to corroborate the alleged accomplice's testimony pursuant to this section and, even if the accomplice's testimony was eliminated, the other evidence presented independently established the crime and tended to connect defendant with its commission. Taylor v. State, 2011 Ark. 10, — S.W.3d — (2011).

Defendant's convictions for aggravated residential burglary and aggravated robbery were appropriate because the state provided sufficient evidence to corroborate his accomplices' testimony; even eliminating the accomplice testimony, the remaining evidence presented independently established the crimes and tended to connect defendant with their commission, as required by subdivisions (e)(1)(A) and (B) of this section. In part, witnesses testified about defendant being with the accomplices on the day of the crimes and the state also presented a witness's testimony that defendant had sold him the three shotguns that were identified as being the ones stolen from the victim. Tucker v. State, 2011 Ark. 144, 381 S.W.3d 1 (2011), dismissed, Tucker v. Hobbs, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 129748 (E.D. Ark. Sept. 12, 2012).

Trial court did not err in denying defendant's motion for a directed verdict during a trial for first-degree murder as an accomplice because there was sufficient evidence under subdivision (e)(1)(A) of this section corroborating a codefendant's testimony that defendant hired the codefendant to murder his wife; two witnesses identified the murder weapon as a gun belonging to defendant. Camp v. State, 2011 Ark. 155, 381 S.W.3d 11 (2011).

Defendant's argument that he was convicted on the basis of the uncorroborated accomplice testimony of his wife contrary to subdivision (e)(1)(A) of this section was not preserved for review. Defendant's wife was never found to be an accomplice, and defendant failed to request that accomplice instructions be submitted to the jury for consideration. Bryant v. State, 2011 Ark. App. 348, 384 S.W.3d 46 (2011).

Independent evidence corroborated defendant's passenger's testimony that drugs in a blue glove in her pants belonged to defendant, including a letter defendant wrote to the passenger from jail asking her to change her statement and to implicate someone else in the crime and the passenger's statements to officers that she had something concealed on her body. Owens v. State, 2011 Ark. App. 763, 387 S.W.3d 250 (2011).

Defendant's conviction for second-degree forgery was proper considering accomplice testimony along with the other evidence, under subdivision (e)(1)(A) of this section. Although the evidence was circumstantial given that it was the accomplice, rather than defendant, who cashed the forged check, circumstantial evidence could provide the basis to support the conviction. Benton v. State, 2012 Ark. App. 71, 388 S.W.3d 488 (2012).

There was sufficient evidence tending to connect defendant to an aggravated robbery and thus to corroborate accomplice testimony because surveillance video established the commission of the crime and an officer testified that defendant matched the description of a robber in the video based on his height and that the officer confirmed the truth of identifying information from a non-accomplice. Smith v. State, 2012 Ark. App. 534, — S.W.3d — (2012).

Evidence was sufficient to sustain convictions for capital murder and aggravated robbery because a witness's testimony corroborated that defendant was an accomplice to the aggravated robbery, defendant knew there was a large amount of marijuana at the home, a gun was used during the robbery, and the victim's death occurred during the robbery under cir-

cumstances manifesting extreme indifference to the value of human life. Bradley v. State, 2013 Ark. 58, — S.W.3d — (2013).

—Appeal.

Defendant was entitled to have the jury decide whether a state's witness was an accomplice whose testimony had to be corroborated pursuant to subdivision (e)(1) of this section and, if so, whether sufficient corroboration was proved; because the witness's testimony raised a question as to his accomplice status and the trial court refused to give a correct instruction permitting the jury to decide the question, the trial court committed reversible error. Torrence v. State, 2010 Ark. App. 225, — S.W.3d — (2010).

—Corroboration.

Trial court did not err in denying defendant's motion for directed verdict as there was sufficient evidence to support defendant's conviction of the underlying felony, aggravated robbery, and capital murder, after eliminating the accomplice testimony; other corroborating evidence demonstrated that defendant had the purpose of committing theft with the use of physical force, was armed with a deadly weapon, and caused the death of the victim and, further, a doctor testified that the victim died from a gunshot wound. Gardner v. State, 364 Ark. 506, 221 S.W.3d 339 (2006).

Circuit court did not err in denying defendant's motion for directed verdict where defendant never requested that the circuit court declare co-defendant an accomplice as a matter of law, nor did defendant ask that the circuit court give a jury instruction on the question of whether co-defendant was an accomplice as a matter of fact; therefore, defendant's accomplice-corroboration challenge was barred and the accomplice-corroboration principles of subdivision (e)(1) of this section did not apply. Price v. State, 365 Ark. 25, 223 S.W.3d 817 (2006).

Evidence was sufficient to sustain a conviction for possession of drug paraphernalia with intent to manufacture methamphetamine where an accomplice testified that defendant was inside his residence "cleaning up a cook" and "bagging everything up"; that testimony was corroborated by an officer who stated that, when he entered the home, defendant was in close proximity to the manufacturing items that were seized from the residence. Fitting v. State, 94 Ark. App. 283, 229 S.W.3d 568 (2006).

Evidence was sufficient to corroborate an accomplice's testimony and sustain defendant's capital murder and kidnapping convictions where the victim stole defendant's marijuana plants, defendant received a call shortly after the murders to go and help his son clean up a mess and defendant's nephew testified that defendant approached him and told him that if he ever said anything about the victim he would get hurt. Green v. State, 365 Ark. 478, 231 S.W.3d 638 (2006).

Confessions.

Convictions for sexual assault were reversed because the state failed to carry its burden of proof where a defendant's confession to sexual assault of his stepdaughters was not made in open court and was not accompanied with other proof that the offenses were committed and where both victims denied abuse at trial. Goodsell v. State, — Ark. App. —, 289 S.W.3d 534 (2008), review denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 465 (Feb. 19, 2009).

Corpus Delicti Rule.

Because a defendant admitted to a battery in open court during a hearing on the state's petition to revoke defendant's suspended sentence, the rule of corpus delicti found in subsection (d) of this section did not apply. May v. State, 2009 Ark. App. 703, — S.W.3d — (2009).

Convictions for sexual assault were reversed because the state failed to carry its burden of proof where a defendant's confession to sexual assault of his stepdaughters was not made in open court and was not accompanied with other proof that the offenses were committed and where both victims denied abuse at trial. Goodsell v. State, — Ark. App. —, 289 S.W.3d 534 (2008), review denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 465 (Feb. 19, 2009).

Trial court did not err in convicting defendant of manslaughter in violation of § 5-10-104(a)(3) because the state presented sufficient evidence to corroborate defendant's confession when the evidence showed that the victim died hours after defendant admittedly went to his apart-

ment, that the victim's apartment was in a state of disarray, which could have been interpreted as circumstantial evidence of a struggle, that blood was found in an area not in the immediate vicinity of where the victim ultimately passed away, and that the medical examiner would have ruled the victim's death a homicide had he known that he had been punched in the head five times; the corpus delicti rule, subsection (d) of this section, does not require the state to corroborate that the defendant committed the crime charged. It merely requires a showing that the crime occurred. Freeman v. State, 2010 Ark. App. 90, — S.W.3d — (2010).

When defendant was convicted of simultaneously possessing drugs and firearms, in violation of § 5-74-106(a)(1), defendant's statement to police that a gun found in defendant's wife's purse belonged to defendant was properly admitted, under subsection (d) of this section, because the statement was corroborated by circumstantial evidence that (1) defendant and defendant's wife were in defendant's car, in which defendant's wife's purse was found, together when police pulled up behind the car, and (2) defendant fled the scene after police tried to arrest defendant upon finding a marijuana cigarette in the car. Patton v. State, 2010 Ark. App. 453, — S.W.3d — (2010).

Substantial evidence supported defendant's convictions for capital murder, residential burglary, and theft of property because the state offered evidence to corroborate defendant's confession under subsection (d) of this section; the state presented evidence that the murder victim died at the hands of another, that a second victim's home was burglarized, and that guns were removed from the second victim's home. Meadows v. State, 2012 Ark. 57, 386 S.W.3d 470 (2012), rehearing denied, — S.W.3d —, 2012 Ark. LEXIS 136 (Ark. Mar. 15, 2012).

Cited: Joiner v. State, 2010 Ark. 309, — S.W.3d — (2010).

16-89-118. Conduct of jury.

CASE NOTES

Admonition.

Court did not abuse its discretion by refusing to poll jurors about an article published in the local newspaper that morning because they had promised to follow the judge's admonishment not to read anything in the morning paper, watch anything on television, or listen to anything on the radio concerning the case. Defense counsel concurred that the court had properly instructed the jury under this section, and the judge announced that he took the jurors at their word and would not poll them. Fields v. State, 2012 Ark. App. 269, — S.W.3d — (2012).

16-89-122. Dismissal of indictment.

CASE NOTES

Nolle Prosequi.

Because a trial court's granting of the state's motion to nol-pros resulted in a final order of dismissal and the state could not perfect an interlocutory appeal after it had the case dismissed, the state's interlocutory appeal under Ark. R. App. P. Crim. 3(a) was dismissed. State v. C.W., 374 Ark. 116, 286 S.W.3d 118 (2008).

Denial of appellant's, an inmate's, petition for postconviction relief was proper because he failed to prove that he received the ineffective assistance of counsel. In part, although the inmate might have successfully quashed the amended information, he was not prejudiced by any resulting error, because the prosecutor would have simply refiled the charges since the state's dismissal of a case by nolle prosequi did not bar a subsequent prosecution under this section; Moreover, trial counsel appeared to have made a well-reasoned tactical decision not to object to the amendment. Hoyle v. State, 2011 Ark. 321, 388 S.W.3d 901 (2011).

16-89-125. Deliberation of jury.

RESEARCH REFERENCES

ALR. Propriety of Audio or Video Playback of Testimony or Statement to Jury. 65 A.L.R.6th 537.

Ark. L. Rev. Case Note, The Deleterious Effects of Anderson and Flanagan on Section 16-89-125(e) of the Arkansas Code Annotated, 61 Ark. L. Rev. 551.

CASE NOTES

Analysis

Exhibits.
Jury Disagreement or Confusion.
Noncompliance.
Papers.
Request for Information.
Strict Compliance.
Subsequent Instructions.

Exhibits.

In defendant's murder case, there was no violation of subsection (e) of this section where the circuit court allowed the deliberating jury to replay defendant's recorded statements outside the courtroom; giving the tapes in question to the jury did not create the possibility that evidence that was never introduced at trial might be introduced in the jury room. Flanagan v. State, 368 Ark. 143, 243 S.W.3d 866 (2006).

Jury Disagreement or Confusion.

Although failure to comply with subsection (e) of this section, requiring the jury to return to court if there is a disagreement or question, gave rise to a presumption of prejudice, the notes exchanged between the court and jury were included in the record, and petitioner failed to show any prejudice from the procedure that was followed. Davis v. State, 2013 Ark. 118, — S.W.3d — (2013).

Noncompliance.

Although a violation occurred when the trial court answered questions from the jury without summoning it into open court, the state overcame the presumption that prejudice arose from the violation where the record showed that the proposed answers to the jury's questions were reduced to writing with agreement of defendant's counsel, and defendant's counsel did not argue on appeal that there was anything improper about their substance; further, the questions and answers were made part of the record and the trial judge did not enter the jury room when the written answers were delivered to the jurors. Clark v. State, 94 Ark. App. 5, 223 S.W.3d 66 (2006).

No one objected to a trial court's failure to answer a jury question regarding the meaning of concurrent and consecutive by bringing the jury back out, but rather debated and acquiesced in the trial court's written response. No abuse of discretion was shown in the trial court's written answer, and any error was not prejudicial. Frost v. State, 2010 Ark. App. 163, — S.W.3d — (2010), rehearing denied, — Ark. App. —, — S.W.3d —, 2010 Ark. App. LEXIS 289 (Mar. 31, 2010).

Papers.

Sending a videotape to the jury after the jury requested a paper document did not violate subdivision (d)(3) of this section because subdivision (d)(3) did not limit exhibits that may be given to the jury during deliberations to papers and there was no danger of additional evidence being introduced by giving the exhibit during deliberations. Anderson v. State, 367 Ark. 536, 242 S.W.3d 229 (2006), cert. denied, Anderson v. Arkansas, 551 U.S. 1133, 127 S. Ct. 2973, 168 L. Ed. 2d 707 (2007).

Defendant's capital-murder conviction was appropriate because there was no error in the circuit court's decision to allow the jury to take a medical examiner's report with them into the jury room during deliberations, per subdivision (d)(3) of this section. The report was introduced into evidence during the trial, while defendant was present and represented by counsel. Jackson v. State, 375 Ark. 321, 290 S.W.3d 574 (2009), rehearing denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 440 (Feb. 12, 2009).

Request for Information.

There was no violation of this section as the information played back to the jury had already been admitted into evidence and defendant did not suffer any prejudice by replaying the evidence. Jackson v. State, 2009 Ark. 336, 321 S.W.3d 260 (2009), rehearing denied, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 586 (Sept. 10, 2009).

Strict Compliance.

There was compliance with this section in response to a note from the jury because the jury was returned to the courtroom and the communication with the jury was documented in the record. James v. State, 2010 Ark. 486, 372 S.W.3d 800 (2010).

Subsequent Instructions.

Even though defendant did not raise the propriety of a state's appeal under Ark. R. App. P. Crim. 3(c), the appeal was dismissed where the state did not present a proper issue for appeal when it claimed that a trial court erred in granting a new trial because there was no issue that concerned the correct and uniform administration of justice where the trial court's ruling turned on whether a bailiff, in fact, answered a juror's question. State v. Short, 2009 Ark. 630, 361 S.W.3d 257 (2009).

Cited: Padilla v. Archer, 2011 Ark. App. 746, 387 S.W.3d 267 (2011).

16-89-126. Verdict generally.

CASE NOTES

Cited: Basham v. State, 2011 Ark. App. 384, — S.W.3d — (2011).

16-89-128. Polling of jury members.

RESEARCH REFERENCES

ALR. Interrogation or Poll of Jurors, During Criminal Trial, as to Whether They Were Exposed to Media Publicity Pertaining to Alleged Crime or Trial. 55 A.L.R.6th 157.

CASE NOTES

Preservation for Review.

Defendant failed to effectively make an argument for application of an exception that would permit the court to address the issue regarding jury polling for the first time on appeal, plus the facts of this case did not present a situation of comparable seriousness as that presented in other case law; defendant failed to make a contemporaneous objection at the conclusion of the jury poll when the trial judge inquired if there was any reason not to release the jury and impose the sentence. Adams v. State, 2009 Ark. 375, 326 S.W.3d 764 (2009), rehearing denied, Adams v. State, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 556 (Sept. 10, 2009), cert. denied, Adams v. Arkansas, 559 U.S. 1021, 130 S. Ct. 1922, 176 L. Ed. 2d 392 (2010).

Cited: Adams v. State, 2013 Ark. 174, — S.W.3d — (2013).

16-89-130. New trial.

CASE NOTES

Analysis

Grounds.
—Jury Misconduct.

Grounds.

Manslaughter defendant failed to show any prejudice from a man's contact with two jurors during her trial, when a man approached the two jurors as they were eating, acknowledged that they were jurors, and referred to defendant as a "pill head;" there was no evidence that the comment was shared with the other jurors or that the jury expressed any equivocation about its verdict. Dail v. State, 2013 Ark. App. 184, — S.W.3d — (2013).

—Jury Misconduct.

Inmate's claims regarding a juror's alleged untruthfulness during voir dire as to his feelings about the death penalty were not cognizable in inmate's postconviction proceeding; his remedy for alleged juror misconduct was to directly attack a verdict by requesting a new trial.Howard v. State, 367 Ark. 18, 238 S.W.3d 24 (2006).